

United States
²
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

THE UNITED STATES OF AMERICA,
Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSO-
CIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,
Appellees.

VOLUME III.
(Pages 705 to 951, Inclusive.)

Upon Appeal from the United States District Court
for the Southern District of California,
Northern Division.

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(Deposition of Wellington F. Christman.)

He paid me \$500 at that time. At the time I signed this first paper for him he left me some shares of stock. It was in the Kern County Land & Oil Company or Pacific Oil & Land Company. Cannot say how many shares he left me, but he said, "Uncle Will, that will be worth \$500 to you some time." I thought he was joking. I didn't expect to get a cent out of it. If he had been any other man in God's world I never would have gone into it. He was a nephew, my wife's brother's son. I supposed he was sincere and honest. He says, "I wouldn't get you into any trouble." He says, "I sent in the Hatch boys' names, and Tom Bailey's name." That is my mother's brother's name. Don't remember signing any other paper in connection with this matter after signing the receipt for \$500.00 in cash which Thickens gave me. (Plaintiff offers in evidence a check in words and [614—508] figures as follows, to wit):

"No. 167. New York, Sep. 11, 1911.

SECOND NATIONAL BANK,

of the City of New York,

5th Ave. and 28th St.

Pay to the order of Wm. F. Christman Two hundred and fifty Dollars.

\$250.00/100

F. H. SEARLS."

(Endorsed as follows): "Received from L. B. McMurtry \$250.00 in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a power of attorney made

(Deposition of Wellington F. Christman.)

by myself and others to said L. B. McMurtry bearing date the 19th day of December, 1907.

WM. F. CHRISTMAN.

C. W. THORN.

F. H. SEARLS.

Sep. 30, 1911.

Received payment through the New York Clearing House. Second National Bank of the city of N. Y.

Endorsement guaranteed

W. M. PABST,

Cashier, 03798''

Mr. HALL.—Q. You never signed that check?
A. I never did.

I never signed such a statement as appears on the back of that check just read and never received \$250. I received \$500. This paper similar to Plaintiff's Exhibit No. 1 which I destroyed after signing it, and Plaintiff's Exhibit 1, and the receipt of the \$500.00, are the only papers I recall ever signing in connection with this matter. No, at the time I signed Plaintiff's Exhibit No. 1, I did not know that any land had been located in Kern County, California, in my name. Was never advised by [615—509] anyone that I and seven others had located the SW.¼ of Section 34, in township 31, range 23, in Kern County, California, as the Iowa Placer Mining Claim, on January 1, 1909, or that I and others had located any other placer claims in Kern County, California, or anywhere else.

Q. The records, I believe, of Kern County show

(Deposition of Wellington F. Christman.)

that the four claims that I have mentioned, namely, the Iowa, Vermont, New York, and Michigan, were located on January 1, 1909, by Francis E. Pratt, J. C. Thickers William F. Christman, T. R. Bailey, Hamlin Hatch, Mark W. Hatch, Walter Wilson and J. E. Farrell, by their attorney in fact L. B. McMurry? A. No, sir. No, I never authorized McMurry to act as my attorney in fact in making these locations. I never saw him. Don't know anything about it. This paper which I signed and put in the mails and then took out and destroyed is the only paper that I ever signed in connection with this matter prior to the signing of Plaintiff's Exhibit No. 1. No, I never had any intention on January 1, 1909, of locating for my own use or participating in any locations on public lands in the State of California or at any other time, nor did I have any intention at that time or any other time, to participate in those four locations named or claim any benefit by reason of those locations having been made. Only what John Thickers told me, that they would be worth probably \$250 to me when I signed that paper.

Q. The records of Kern County show further that your name appears as a locator, along with seven other people, upon the following list of mining claims, and I will read off of the list: Mischief No. 4, Mischief No. 5, Mischief No. 9, Louisiana, Paradox, St. Anthony, Anheuser, Weiss, Napa, Elite No. 10, Elite No. 18, Elite No. 22, Elite No. 29, Elite No. 31, [616—510] Elite No. 39 and Greenwich,

(Deposition of Wellington F. Christman.)

covering various lands in California. A. No, I never intended to have any interest in any of those claims or lands.

Q. Did you know at the time you signed this paper which has been marked Plaintiff's Exhibit 1, that Mr. L. B. McMurtry was about to sell to William F. Herron and others the several tracts of land which had been covered by the Iowa, Vermont, New York or the Michigan claims? A. No, sir, I never knew anything about it.

No, I never have since learned a word about it all. I know nothing about it no more than a dead man, not one bit more. I never heard from Jack Thickers since he left me that \$500, and that is four or five years ago this spring. That is the only paper that I ever signed or know anything about, except the one I told you about, the receipt. I never signed the receipt for Certificate No. 36 for 1,000 shares of Pacific Oil Land Company stock, dated December 16, 1911. I never signed any such paper nor did I sign the assignment on the back of the certificate. Yes, I had that certificate of stock. I had a bundle of certificates. I don't know the numbers. I surrendered these certificates to Thickers when he paid me the \$500. Never saw McMurtry and Thickers never told me of any contracts made by McMurtry under any power of attorney from me. The man who brought this paper to be signed was John B. Thickers, who is the son of John Thickers, and he is the only one that said a thing to me about the land in California, except the Hatch boys. I got a

(Deposition of Wellington F. Christman.)

letter from Hamlin Hatch three or four years ago who wanted me to go in and start a suit against Mr. McMurtry to get some more money out of him; and I said I would have nothing to do with it. [617—511]

Q. I again refer to Plaintiff's Exhibit No. 1, and ask you to tell me why you signed and executed that paper. A. Because he told me I was going to get \$250, that is why.

Yes, that is the only reason. I never expected to get a cent through the mining stock or anything else. I thought that when he got ready to pay me \$250 I would take it. When he gave me these shares of stock, he says, "Uncle Will, they will be worth probably \$500 to you some time." I took the stock and put it in the safety deposit box in the bank with the rest of my papers. Then he came out here to Wisconsin. He had been to Kansas to see Mr. Hatch, he said. I don't know if he was down there. I don't know whether he paid any money or not. He didn't say. And then he came to my house about this matter. Now, he says, "I want them shares of stock." I said "Why?" He said he wanted to take the train for Chicago that night, that he was in a hurry. I said, "The bank is locked up, and we can't get in until nine o'clock to-morrow morning." He says, "Then I will have to stay over." He says, "I am awful busy; I have to take that train." I says I couldn't deliver the papers to him until I could get in the bank. The bank was opened at nine o'clock, and the train went at nine

(Deposition of Wellington F. Christman.)

forty-five, and he was in a hurry. We went down there and took out the stuff, those shares. I don't know what they were. At any rate they were stock of some kind. I couldn't tell you one word that was on them. I can only tell you that there was the Pacific Land & Oil Company on there. I noticed that on the head of some paper. The others I didn't pay any attention to. I didn't think it amounted to a damn, anyhow. I got this money, and I took it and I spent it, and that is all there is to it.

Q. You never claimed any interest in any of the lands [618—512] since then? A. No, sir. I told you before he wanted me to sign William F., and I done so to please him, and that is all. I scolded him like the devil for signing the name in that way, for using my name, and then giving a power of attorney to use it. I suppose they located this land under that power of attorney. Whether they located it or not I don't know. I never seen that receipt, or signed any of those things, there, either.

Cross-examination.

One of my daughters married Hamlin E. Hatch and they lived in New York City for two or three years, from which place she came home to live with me some eleven or twelve years ago, and is still with me. Yes. John C. Thickens and John B. Thickens both were alive and living in New York when my daughter Emaline came to live with me after she separated from her husband, Hamlin E. Hatch. I generally signed my name W. F. Christman, but my

(Deposition of Wellington F. Christman.)

full name is Wellington F. Christman, Jack Thicken's mother was at my home a year ago last summer—1915.

Yes, I signed that paper (Plaintiff's Exhibit No. 1).

Q. What name did you use in signing such paper.

A. I was going to write my name Wellington F. Christman or W. F. Christman. Q. I asked you what name you signed, not what you were going to do. A. Well, he told me, he says, sign it William F.

Yes, I gave my permission to act or I wouldn't have signed the paper. No, I didn't intend to fraud or cheat the Government or permit McMurtry or anyone else to do so. I didn't suppose there was any fraud to it. No, neither John Thicken's or anyone else told me that they wanted to borrow my name for the purpose of getting land for somebody else. He wanted to get located those lands so they could drill and get oil out of it. [619—513] Yes, according to my recollection, Plaintiff's Exhibit No. 1, the same paper which I signed and then tore up, and the receipt that I gave Thickens at the time he gave me the \$500 are the only papers I ever signed in connection with this matter. I don't recall signing the receipt for this stock. (Defendants' Exhibit No. 4 offered and read in evidence as follows:)

Defendants' Exhibit No. 4.

“September 16, 1911.

“Received of L. B. McMurtry 1,000 shares of the
PACIFIC OIL LANDS COMPANY in full of all

(Deposition of Wellington F. Christman.)

claims and demands growing out of power of attorney given by me to him of date December 19th, 1907.

“WM. F. CHRISTMAN.

(Endorsed as follows:) “Clinton June., Rock Co., Wis.”

No, I didn't know this certificate had been issued in my name. Thickens didn't show that to me. I had them in my possession about a year and a half or maybe longer. Never looked at the papers after I put them in the box until I took them out to give them back to Thickens. Yes, I am positive that all I did was to deliver the certificates to Thickens, and that I didn't put my name on the back. I can't tell how many shares in that company I delivered. Never heard anything more about this. Never had any papers or money from the Pacific Oil Lands Company, only what Thickens paid me.

Q. Never got a check from them? A. Wait a minute. The postmaster says to me one day, he says, “I got a letter here,” and he read it to me, didn't show it to me, I didn't get it in my hand, it said something about the Pacific Oil Lands Company, and wanted to know if there was a William F. [620—514] Christman got his mail there in 1913 or 1914 at Clinton. I know the postmaster, knew him before he was born, have known him ever since he was born, ever since he was a baby. I says, “You can tell them that there is no William F. Christman here, but there is a Wellington F. Christman.” And he read something about the Pacific

(Deposition of Wellington F. Christman.)

Oil Lands Company. I think it was something pertaining to this case, and that is all I heard.

Yes, I am absolutely sure I never got any money or check of any kind from the Pacific Oil Lands Company or anybody connected with it after Thickens gave me this money.

(Being shown Defendant's Exhibit 5, the same being a check dated San Francisco, January 8, 1914, for \$20, payable to Wm. F. Christman and signed Pacific Oil Lands Company by J. E. Harrison, Secretary and Treasurer and L. B. McMurtry and endorsed Wm. F. Christman.)

I never received that check and never signed it.

Q. After having answered the last question you requested me to wait a moment, and then you made some remark to the effect that there was some faint recollection in your mind that you might have received something. Will you now go on and tell just exactly the state of your mind as to the subject matter we are talking about? A. It seems to me now after you have pressed it so thoroughly upon me that I did get twenty dollars from that bank. Q. And that you did get a check? A. I think so.

It seems to me, since you have said so much about it, I did get twenty dollars from them. Again looking at the signature on that check I think that is all right.

(Defendants' Exhibit No. 5 offered and read in evidence as follows:) [621—515]

Defendants' Exhibit No. 5.

San Francisco, 1-8, 1914 No. 1198.

Clearing House No. 1.

THE BANK OF CALIFORNIA,
National Association,
San Francisco.

11-1

Pay to the order of Wm. F. Christman \$20.00—
Twenty and 00/100 Dollars.

PACIFIC OIL LANDS CO.
F. J. E. HARRISON,
Secy. & Treas.

L. B. McMURTRY,
Vice-pres.

(Endorsement as follows:)

Wm. F. Christman
8 M. 8

All prior endorsements guaranteed

FIRST NATIONAL BANK OF CHICAGO

2-1—Jan. 16, 1914—2-1

H. A. Howland, Cashier.

Pay to the order of
First National Bank
of

CHICAGO

(All prior endorsements guaranteed)

CITIZENS BANK,
79-486 Clinton, Wisconsin,
H. A. Moelenpah, Cashier.

(Perforated:)

PAID

(Deposition of Wellington F. Christman.)

I still have no recollection of signing the receipt for stock certificate No. 36 of the Pacific Oil Lands Company dated December 16, 1911. No, my memory is not very strong. I forget things often, more so since I had this trouble in my head. Have a ringing in my head all the time. No, I have never said anything to my nephew about imposing on me in these [622—516] transactions. I got this \$20.00 before I got the \$500.00, but I had forgotten all about that. I don't know how I got the \$20.00, whether it was a check or not.

Q. Now, I want to show you a piece of paper which is entitled "Pacific Oil Lands Company First Report to the Stockholders." It is not true that you received a copy of that sheet of paper with that check of twenty dollars? A. No, sir, I did not receive any such thing as that. Q. You are absolutely positive about that? A. Yes, sir.

Redirect Examination.

It was about a year or a year and a half between the time Thickers brought me this paper which I signed and the time he took up the stock certificate and gave me \$500. No, nothing was said at this second visit about what amount of oil lands my name had been used in locating—not a word. He spoke about paying this money. I said, "Gentlemen, where is the money coming from to pay?" He says, "We have leased enough land to pay for it." I can't say who he meant unless it was the company. [623—517]

Deposition of Emaline Hatch, for Plaintiff.

EMALINE HATCH, called by plaintiff April 4, 1917, testified by deposition as follows:

I reside at Clinton Junction, Wisconsin. Was formerly the wife of Hamlin E. Hatch. Think I was residing in Clinton with my father, Wellington F. Christman in December, 1907. No, he didn't go to New York during that month. I would have known it if he had. [624—518]

Testimony of George A. Meinecke, for Defendants.

GEORGE A. MEINECKE, called February 25, 1919, by defendants, testified in open court as follows:

I reside at 135 Overlook Street, Mount Vernon, New York; have resided in New York all my life. Am employment manager of the Underwood Typewriter Company.

Q. I hand you a paper that is a certified copy of the power of attorney which is recorded in Book 10 of Powers of Attorney, page 13, Kern County, California, records (Substance of Plaintiff's Exhibit 5 stated) and ask you whether you signed the original of that power of attorney in New York in December, 1907 or not. A. Yes, sir.

Yes, I read it at the time. No, there was no conversation between myself and anybody else to the effect that I was signing that paper for the benefit of anybody other than myself and the locators, and there was no statement to the effect that I would ever be called upon to transfer my interest in the

(Testimony of George A. Meinecke.)

lands that were located to anybody else. No, I never attempted to modify, set aside or ratify that power of attorney.

(Witness shown photographic copy of ratification.) That ratification bears my signature and I read it when I signed it and delivered it to C. W. Thorn. (Said ratification is similar in form to Plaintiff's Exhibit 1, with the deposition of Frank B. Chapman, and purports to have been signed August 16, 1910.)

The notary before whom that was acknowledged was assistant manager in New York City. Yes, I noted at the time of signing this ratification the statement therein, "I hereby ratify, approve and confirm those certain contracts of sale made for me [625—519] and in my name by L. B. McMurtry as attorney in fact with W. F. Herrin, et al., etc. No one ever told me that the intent and purpose of that power of attorney was to enable anybody to obtain a greater quantity of land than the law allowed or to defraud the Government or anybody else. No one ever asked me at any time to execute any conveyance of that property prior to making the locations or prior to the execution of the ratification or at any other time.

Cross-examination.

I talked over the signing of this power of attorney with Mark Hatch, Powell and C. W. Thorn, but am not sure just which one asked me to sign it. Believe Powell first broached the subject. Was never a stockholder in the Empire Oil & Development Com-

(Testimony of George A. Meinecke.)

pany. The signing of this power was first mentioned, I think, a week or two before I signed it. It was for the purpose of locating oil lands in California with the object of drilling for oil. McMurtry was to do the drilling and the locators were to be interested in the lands. No, nothing was said by either Powell or Thorn about these locators all being interested in the Empire Oil Company.

Q. Was there anything said by Thorn to you to the effect that Mr. McMurtry was about to make an attempt to locate some new oil properties and pay back the stockholders who had invested their money in the Empire Oil & Development Company?

A. That, as I understood, was McMurtry's intention for going into the developments. Q. And Thorn

told you that, did he? A. Mr. Thorn told me that.

Q. You understood that before you made the location—or before you signed the power of attorney?

A. I wouldn't say just when it was, but it was at or about that time. [626—520]

No, I did not sign that power as an accommodation to Thorn and McMurtry more than for any other reason. My reason for signing was to acquire an interest in oil lands. I never knew definitely how, but I knew that I would have a one-eighth interest with these others who were on my power. Had no definite knowledge as to the number of locations that would be made. At that time I supposed it was one. I did not know when I signed that ratification in 1910 how many locations had been made in my name or in 1911.

(Testimony of George A. Meinecke.)

Yes, I received stock in the Pacific Oil Lands Company after I signed this power of attorney; from Thorn. The reason given was that it was my share in the lands that had been located. No, I did not know how many locations had been made. Yes, I made inquiry; inquired of Thorn but did not find out. He said McMurtry was working and developing the lands that had been located. Did not ask him how many particular quarters had been located. Have no recollection of that. It never crossed my mind if I thought I was only entitled to one. I never had any other thought until I came here in 1916. Can't say I ever gave it any [627—521] thought. In my mind possibly I figured that I was entitled, as a citizen, to a location, but what it meant, how much, or how it was done, I was not sure. No, until I came to California in 1916, to testify in the former trial I had no knowledge as to what my rights were under the mining laws. I relied upon McMurtry and got my information from Thorn, Powell and Hatch. Yes, I received \$250 at one time. Thorn gave it to me; I think it was in November, 1914. No, I did not receive two checks for \$250. Did not receive any money at the time I signed the ratification but I received a check. (Photographic copy of check dated September 11, 1911, exhibited.) That is my signature on the back of that copy.

Q. You observe there the typewritten matter, which is as follows: "Received from L. B. McMurtry \$250, in full payment for all my right, title and interest in and to all lands located by L. B. Mc-

(Testimony of George A. Meinecke.)

Murtry, on my behalf, in Kern County, California, pursuant to a power of attorney made by myself and others to said L. B. McMurtry, bearing date the 21st day of December, 1907." Was that typewriting which I have just read upon the back of the check when you affixed your signature, "George A. Meinecke," thereto? A. I have no recollection of that at all.

If that typewriting was there when I signed I must have read it. By reason of signing that I received 1000 shares of the Pacific Oil Land Company's stock and 750 shares of the Columbus Midway. Mr. Thorn gave this stock to me. The Pacific Oil Lands Company stock was given me as my shares in the land that had been located in my name. Yes, I inquired of Thorn but did not learn. I never knew any of the details at all and made no inquiry of anyone else. Yes, I remember the ratification. Thorn presented it to me. I read it and signed it. Yes, I made [628—522] inquiry of Thorn as to what that contract mentioned in the ratification was. Only found out from him that it was a contract in in prospect. Did not write McMurtry about it or make inquiry of Herrin and others. Did not know who they were. No, did not ascertain what the nature and purports of the contract was—not at that time. The only person I inquired of concerning this prior to January 1, 1914, was Thorn. He would come in and see me continually. He lived at Little-town, and whenever he came to New York he seemed to drop into the office, and after he gave me the 750

(Testimony of George A. Meinecke.)

shares of Columbus Midway stock his visits were more numerous, and I remember he would bring me long newspaper clippings of the progress of the oil fields. His intent was to sell me more of that stock. Yes, I signed a proxy—signed one or more proxies, but I don't recall the names. C. W. Thorn presented them to me. He is the only one that ever came to see me about these matters. This proxy of August, 1913, was brought to me by Thorn. Whenever he brought any paper to me to sign he always had another person with him who he said was the notary. Don't know that I would recognize him as I didn't know him. No, I did not receive any communication from the Pacific Oil Lands Company in December, 1913, in regard to these transactions. Believe Thorn presented to me a paper calling for the consent to the distribution of certain assets of the company and I signed it and afterwards received a check for \$20 from Mr. Thorn. No, nothing else was presented to me at that time by Thorn. No, no statement of the condition or resources of the company was then presented. The first I ever remember seeing that paper was in 1916. This \$20 dividend was the only dividend I ever received.

Q. Now, how soon after that, when Thorn delivered the \$20 [629—523] check to you, did you hear anything more about this oil land transaction?

A. Mr. Thorn came in continually, as I say. He dropped in there for a few minutes, possibly, leaving a pamphlet or telling me something about another oil well that had gone wrong, or something of that

(Testimony of George A. Meinecke.)

kind, and moved on. I was very busy at that time—very much overworked.

The circumstances concerning the disposal of my stock in the Pacific Oil Lands Company were: Mr. Thorn came to see me and told me that—or, rather, in his previous visits he was always telling me more about the Columbus Midway and the wells that were sinking and the prospects in that regard, but he never knew anything about the Pacific Oil Land Company's properties, except that, in a general way, things were going from bad to worse, and in my conversations I remember, when I received the \$20 check, I told him it would come in very handy. But when he came back at a later date and gave me \$250—or rather offered to take up the Columbus Midway stock for \$250—He came and offered to purchase the 750 shares of Columbus Midway for the \$250, which he had promised he would do when he asked to take it, in lien of the cash, when he presented the first check for \$250, [630—524] and as sort of an afterthought he said to me, "If you would like to dispose of your 1000 shares of stock I will take that up also for a like sum." Q. That is the thousand shares of stock of the Pacific Oil Lands Company? A. Yes. Q. And did you let it go? A. I asked him if that was all it was worth, or words to that effect, and he told me that under the circumstances I could continue to draw \$20 a month. But he never explained to me why I had not received more than the one \$20 check. Q. Well, did you let your stock go at that time for \$250? A. I let the

(Testimony of George A. Meinecke.)

stock go for \$250. Q. And you signed the certificate on the back and delivered it to Mr. Thorn? A. Yes.

No, I never received any money or thing of value afterwards by reason of this power of attorney executed in December, 1907. Never received any stock in any other corporation or any other money or dividends. No, at the time I parted with this certificate of stock in the Pacific Oil Lands Company I did not know how many location notices had been pasted in California upon which my name appeared. No, I made no inquiry as to that. I don't think the thought ever occurred to me of obtaining more than the one. The only thing I knew about the capitalization of this company at the time I surrendered my stock was what the certificate showed. That was printed one million. No, I did not know who the shareholders of stockholders were, "Except that my understanding of it was that it was the thirty-two locators. I was told that each had given to them the same as I received. Who received the other 968,000 shares I do not know. That was what I wanted to know but never found out. Thorn was the only one I inquired of. Yes, J. McG. Williamson called on me at my office in New York City on April 24, 1914, and also at my house the evening before. Yes, I then signed a written statement to [631—525] which I was sworn. (Typewritten paper shown witness.) Is that the paper that you swore to?

Mr. HALL.—We offer it in evidence.

(Testimony of George A. Meinecke.)

Mr. ACH.—It is objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

The COURT.—I think it can be used for the purpose of impeaching the witness.

Mr. ACH.—He has got to call the witness' attention to any statements that are at variance and give him an opportunity to explain what they are.

Q. (By Mr. HALL.) I asked you on your cross-examination whether you had signed the paper more as an accommodation to Mr. Thorn and Mr. McMurtry than for any other reason. I now read to you from the affidavit. Did you not state in the affidavit: "The powers of attorney were signed more as an accommodation to Thorn and McMurtry than for any other reason."? A. That is what the document says there, but those are not my words. Q. Now, is it not a fact that that affidavit, in the form it is now in, namely, typewritten upon two sheets of paper, was typewritten at your suggestion by one of your employees in your office in New York? A. This document was typewritten by my stenographer in my office from a page presented by Mr. Williamson. Q. And is it not a fact that you had read over that written page presented by Mr. Williamson prior to the time our stenographer typed this in your office in New York? A. That I am not sure of. Q. Is it not also a fact that prior to the time your stenographer typed this typewritten matter that you said to Mr. Williamson, in substance and effect, that it was remarkable

(Testimony of George A. Meinecke.)

that he could get your language down so exactly?

A. I don't recall making any statement of that

kind. Q. (By Mr. HALL.) Well, [632—526]

did you or did you not make such a statement?

A. I cannot recall now, so I cannot say whether I

did or not. Q. (By Mr. HALL.) Well, will you

say now what your recollection is, after it has been

refreshed by seeing this paper, as to whether or

not you made such a statement?

Mr. ACH.—That is objected to as without predi-

cate. He has not stated that that paper refreshed

his recollection. He said these were not his words.

Q. (By Mr. HALL.) Well, does this typewrit-

ten paper now refresh your recollection after I

have read to you what I have from it as to the

fact—if it be a fact—that you did or did not say

to Mr. Williamson that it was quite remarkable that

he could get down your exact language so accu-

ately. A. I have no recollection of making that

statement, no. Q. You made this statement also

in the affidavit, did you not: "Some time after-

wards Thorn came to me and said that McMurtry

was about to make an attempt to locate some new

oil properties and pay back the stockholders who

had invested their money in the Empire Oil & De-

velopment Company"? You made that statement,

did you not, in the affidavit I have called to your

attention? A. That was in the statement presented

by Mr. Williamson, yes, sir. Q. Did you make

that statement prior to the time that you signed

this affidavit to Mr. Williamson? A. I possibly

(Testimony of George A. Meinecke.)

told him that that was Mr. McMurtry's idea of getting the powers of attorney. That was not my idea. Q. Was it your idea at the time you signed the power of attorney that Mr. McMurtry was getting those powers of attorney for the purpose of locating some oil land and paying back the stockholders who had invested their money in the Empire Oil & Development Company? A. My understanding was that by getting these locators to sign these powers of attorney Mr. [633—527] McMurtry would secure a new occupation, as it were, the old affair that he was in having—well,—

Mr. ACH.—Gone by the board?

A. Gone by the board, or failed, or whatever you might say. And that by reason of his acting for us he was to put himself as well as ourselves in line for making money. Q. (By Mr. HALL.) Now, I have already read to you this sentence "The power of attorney was signed more as an accommodation to Thorn and McMurtry than for any other purpose." Is that statement true or untrue? A. It is true to this degree—that I considered it a favor to permit anybody to use my name in the broad sense that that paper purported, with such a slight knowledge of Mr. McMurtry.

Mr. HALL.—I will offer this paper in evidence.

The COURT.—I don't know that *you entitled* to offer it in evidence over the objection of the defendant. You may use it for the purpose or contradicting the witness, and you have asked him about that."

(Testimony of George A. Meinecke.)

No, I was never called upon to expend any money in the development of any of these lands upon which my name appeared as a locator.

Redirect Examination.

Yes, during the conversation with Mr. Williamson April 25, 1914, I handed him a copy of a letter addressed to Hamlin E. Hatch on the subject of these locations in connection with the statement contained in the affidavit to the effect: Attached hereto is a copy of a letter sent by me to Hamlin E. Hatch, which explains in detail my transactions with the Pacific Oil Lands Company.”

Mr. ACH.—I offer that letter in evidence.
[634—528]

Mr. HALL.—I have no objection if the affidavit which forms part of it goes in.

Mr. ACH.—It doesn't make any difference whether the affidavit goes in or not.

The COURT.—It is referred to in the affidavit, is it not?

Mr. ACH.—Yes.

Mr. HALL.—And it was attached to it.

Mr. ACH.—It isn't attached now.

The COURT.—Well, it was.

Mr. ACH.—It evidently was; yes.

The COURT.—I think you had better offer the whole thing.

Mr. ACH.—Is the letter admitted?

The COURT.—Yes, but I think you ought to offer them both together.

(Testimony of George A. Meinecke.)

Mr. HALL.—Is the affidavit offered in connection with the letter?

Mr. ACH.—No.

Mr. HALL.—I object to it as incompetent, irrelevant and immaterial.

The COURT.—The objection is sustained. The letter is not admitted without the other part of it.

Mr. ACH.—The letter is not admitted?

The COURT.—No.

Q. (By Mr. ACH.) Now, at the time you had an interview with Mr. McG. Williamson did you say anything to him about any other paper that would explain your relation to the Pacific Oil Lands Company and these locations at all?

A. I told him that the language—

Mr. HALL.—Just a minute. Answer that yes or no. A. Yes. [635—529]

Q. (By Mr. ACH.) What did you say to him?

Mr. HALL.—I object to that.

Mr. ACH.—I am entitled to the whole interview.

The COURT.—You are entitled to that.

A. I told him that the wording of his affidavit was not my exact understanding, but that if he would make my letter to Mr. Hatch a part of it I would sign it, and he agreed. Q. (By Mr. ACH.)

And was this letter which I now hand you the letter referred to (handing paper to witness)? A. Yes,

sir. Q. And did you hand that letter to Mr. McG. Williamson at the time?

Mr. ACH.—I now offer it in evidence.

Mr. HALL.—I object to it unless the whole affidavit goes in.

The COURT.—The witness has now testified that it was made part of the affidavit. He said *he said* he would sign the affidavit if he attached the letter to it and made it a part of the affidavit.

Mr. ACH.—Do I have to attach the affidavit to it, your Honor?

The COURT.—I think the entire matter should go in.

Mr. ACH.—All right, if your Honor thinks so. I have no desire to draw the shade upon any light that your Honor may obtain upon these transactions of any kind or character, but at the same time my friend Mr. Hall frequently speaks about the “oil game,” and there is one game in the law, and I think I am entitled to this letter under the subsequent foundation as a part of the conversation.

Mr. HALL.—I am willing that all or none of it should go in.

The COURT.—Very well.

Mr. ACH.—I will read this whole affidavit, then, your Honor, with this letter so that it will be before the court.

(Affidavit read by Mr. Ach.)

Mr. HALL.—I thought you offered it all.

Mr. ACH.—No, I said I had no objection to its going in them [636—530] and I would read it for you. I am not offering the affidavit.

Mr. HALL.—The record shows you did offer it. But I will let it stand that way.

Mr. ACH.—I said to the Court that I was perfectly willing it should go in; that I did not desire to pull a shade over any light and so forth.

State of New York

City of New York,—ss.

George A. Meinecke, of lawful age, being duly sworn deposes and says:

I reside at 174 Archer Avenue, Mount Vernon, N. Y. but my business address is c/o Underwood Typewriter Co., No. 30 Vesey St., New York City.

I am the same George A. Meinecke who some years ago, probably in 1907, executed some powers of attorney authorizing one L. B. McMurtry to locate oil lands in California in my name. The execution of these powers of attorney came about in this way.

Through one Edwin L. Powell, who had been an employee of the Underwood Typewriter Co., I had become acquainted with L. B. McMurtry and with C. W. Thorn. These men were all interested in an oil company operating in California, known as the Empire Oil & Development Co. Thorn and Powell had frequently solicited me to buy stock in this company, but I never did so, and, after a time, the company, for some [637—531] reason unknown to me, went out of business.

Some time afterward Thorn came to me and said that McMurtry was about to make an attempt to locate some new oil properties and pay back the stockholders who had invested their money in the Empire Oil & Development Co. He stated that McMurtry needed some powers of attorney in order

to make the oil locations and asked me to sign some of these powers of attorney for McMurtry, telling me that of McMurtry discovered oil I would get something out of it. He promised me no definite amount of money and no specific interest in the lands he located. I do not now remember how many of these powers of attorney I signed, but they were all part of the same transaction. No money was ever paid out or demanded of me in connection with the location, the powers of attorney or any part of the transaction. The powers of attorney were signed more as an accommodation to Thorn and McMurtry than for any other reason. I do not even know where the lands which were located are situated.

After signing the powers of attorney, I paid but little further attention to the matter until two or three years ago when Thorn came to my office and said he had good news for me. He explained that each of the persons who had given a power of attorney for the location of lands similar to mine was to receive one thousand shares of stock in the Pacific Oil Lands Co. and \$250. in cash. He said, however, that it would seriously interfere with the company's finances if they paid out all of this money in cash and he proposed that I accept in its stead 750 shares of stock in the Columbus Midway Company. He promised that in a year this stock would be worth considerably [638—532] more than the \$250. I assented to this proposal and indorsed the \$250 check to Thorn receiving in return 750

shares of stock in the Columbus Midway Co. and 1,000 shares in the Pacific Oil Lands Co.

Last December or January, Thorn again came to my office and told me that I was entitled to a dividend of \$20 on my stock in the Pacific Oil Lands Co. He explained that the land had been leased to another company which was paying \$20,000 a month for the oil taken out, and this \$20 was my share of the lease money.

About a month ago, Thorn came again to my office and informed me that there was an opportunity to get rid of my stock in both companies. The Pacific Oil Lands Co. would pay me \$250 for my stock and he would pay a like amount for the stock in the Columbus Midway Company. I asked him whether the Pacific Oil Lands stock was not worth more than this, and he stated that if I wanted to hold on to it, I would probably receive in dividends \$20 a month for the next four or five years. This would be derived from the money received under the company's lease. He added, however, that the company was having some trouble with the Government over the title to the lands, and I was taking a chance on holding the stock and that \$250 was a good price for it at the present time. Since I was in need of the money at the time, I agreed to return the stock, signing the certificate in blank, and receiving therefor \$250 in cash. Thorn also paid me for the stock in the Columbus Midway Company which I returned to him at the same time.

Attached hereto is a copy of a letter sent by me

[639—533] me to Hamlin E. Fitch, which explains in detail my transactions with the Pacific Oil Lands Co.

I have read the above affidavit before signing same.

(Signed) GEORGE A. MEINECKE.

Subscribed and sworn to before me this twenty-fifth day of April, 1914.

(Signed) J. McG. WILLIAMSON,
Special Agent, G. L. O.”

(Letter read by Mr. Ach as follows):

“174 Archer Avenue,
Mt. Vernon, N. Y.

March 26th, 1914.

Mr. Hamlin E. Hatch,
General Delivery,
San Francisco, Cal.

My dear Mr. Hatch:

Some time prior to 1911 I was requested by Mr. C. W. Thorn of 7 Prospect Avenue, Middletown, New York, to give power of attorney for the location of certain oil property in California, at which time he informed me that Mr. L. B. McMurtry was the party that was doing the actual locating. From time to time after I signed power of attorney, I was requested to sign various papers and additional power of attorney, various reasons being given at the time the requests were made.

Some time in 1911 Mr. C. W. Thorn called upon me and presented a check for \$250.00, same being

a payment in connection with the sale of some property which had been located in my name. He stated that the company didn't have sufficient funds to make payment on these checks and merely presented same for my endorsement, and that he would give me instead, 750 shares of the Columbus Midway [640—534] Oil Company, which he said at the end of a year or so, Mr. McMurtry would be willing to take over at \$250.00, should I desire to sell it, and that it undoubtedly would be worth more than that sum in a year or two from the date he gave it to me. I endorsed the check and gave it back to Mr. Thorne without receiving any money therefor, and instead, accepted 750 shares of Columbus Midway Oil Company, said certificate being No. 420, and being made out to Mr. C. W. Thorne. I did not have this stock *record*, but kept it in the name of Mr. Thorne.

At or about the same time of the above transaction, Mr. Thorne gave me as my holdings in the property which had been located in my name, 1,000 shares of the Pacific Oil Lands Company. From that time up to January, 1914, I heard nothing whatever regarding the property or what was being done, except in so far as I was requested to sign my name to different papers. In January, 1914, I received \$20.00 as the first dividend on my stock of the Columbus Midway Oil Company, for the month of January, and understood I was to receive \$20 per month for a number of months, but did not know just how this was arranged. The \$20 above

referred to was the only dividend I received.

On March 13th, 1914, Mr. C. W. Thorne came to my office and told me that inasmuch as I had told him upon one of his previous visits, that I was anxious to turn my stock into cash as soon as possible, that he would buy my stock and offered to make good Mr. McMurtry's promise to give me \$250 for my 750 shares of Columbus Midway Oil Company, and also offered me \$250 for my 1,000 [641—535] shares of the Pacific Oil Lands Company.

As his offer was made at a time when I needed as much cash as I could collect, I accepted his \$500. which was tendered in cash. I endorsed the Pacific Oil Lands Company stock which was in my name in blank, and did not even insert the date as Mr. Thorne requested me not to. The 750 shares of Columbus Midway Oil Company, being in the name of Mr. Thorne, he requested me to copy the printed matter from the back of the certificate and to sign my name and to leave the certificate blank and also to leave the date blank. This I did.

Enclosed you will find a copy of the printed matter to which I merely added my name. I could not quite understand why I was requested merely to sign my name, but having confidence in Mr. Thorne, did as he requested. Since having the above transaction, I have come to believe that I parted with stock that is worth considerably more than the amount I received, and therefore, having learned in an indirect way that you were in San Francisco, and not knowing your address, I write these facts to you in the

(Testimony of George A. Meinecke.)

hopes that you will be able to make some sort of an investigation to see if the facts were as they have been stated to me, and to learn whether I have been done out of money that I really was entitled to. If you find I have not been treated honestly in this matter, and there is anything that can be done to secure the difference between what I should have received and what I did receive, I would thank you very much for the information.

Regretting that I did not know that you were going to California so that I might have seen you before you left, and hoping that I shall have good news from you, [642—536]

I remain,

Yours very truly.

GAM/HHP.”

Yes, I endorsed this check dated September 11, 1911, and received the stock in the Pacific Oil Lands Company and the Columbus Midway Oil Company at the same time—in September, 1911. I received the 750 shares of the Columbus Midway stock instead of the cash for the check. No, at the time I signed the ratification August 16, 1910, I did not give any money or promise any. No, prior to coming to San Francisco in 1916 I was not advised that McMurtry or anybody else had caused all the stock in the Pacific Oil Lands Company with the exception of three qualifying shares to be issued to himself. I didn't know how many shares were issued. Did not know at the time I received that check that any stock had been issued to McMurtry, Searls, Harrison or Hoeppner.

(Testimony of George A. Meinecke.)

Yes, I mailed that letter to Hatch. Have looked all through my papers but do not find the answer.

Recross-examination.

Have no recollection at the time I received the 1000 shares of stock in the Pacific Oil Lands Company of having signed a receipt other than the receipt on the back of the check for \$250, dated September 11, 1911. Don't recall giving any other receipt or release. As I recall, I just gave him my thousand shares and he gave me the money. [643—537]

Deposition of John B. Thickens, for Plaintiff.

JOHN B. THICKENS, called by plaintiff April 27, 1917, testified by deposition as follows:

I am engaged in the woolen business. Reside at Gramercy Place, New Rochelle, New York.. Never lived in any of the so-called public land states west of the Mississippi River, nor have I ever engaged in mining or the production of oil. In December, 1907, lived in New York City and was engaged in the woolen business at 79 Fifth Avenue, as a member of the firm of Nixon & Thickens. Met L. B. McMurtry at his office, 299 Broadway, in 1905. I became assistant treasurer of the Empire Oil Company at that time and was associated with McMurtry during 1905, 1906, and 1907. F. H. Searls was treasurer. Met McMurtry through my wife, who was employed in the office of the Empire Company. I was assistant treasurer. Did not know much about the affairs of the company during 1907. My stock was given to me. The matter of this power of attorney to which

(Deposition of John B. Thickens.)

I secured a number of signers was first suggested to me I think in December, 1907, in McMurtry's office. Don't recall how long before I secured signers. It was his venture. The question of securing names to these powers of attorney was talked over a number of times. It was explained to me, simply what McMurtry could do out there and what he knew about oil lands. Talked in a general way, and that was what I explained to all of the people I afterwards secured. No, I did not request any persons to sign that power of attorney. Yes, I talked to some about signing. Talked to Herbert M. Walker, H. E. Bashore, R. D. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz, Frank E. Pratt, William Mahr, J. C. Thickens, T. R. Bailey, Hamlin E. Hatch, Mark W. Hatch, Walter Wilson, J. E. Farrell, William F. or Wellington F. Christman. Yes, I might have been present when those parties signed. [644—538] Bailey is an uncle of mine, and resided at Utica, New York. J. C. Thickens is my father. Yes, he and T. R. Bailey are now deceased. R. B. Welch is my brother-in-law. No, I did not see William F. or Wellington F. Christman sign the power of attorney. I signed the name William F. Christman to that power of attorney. No, Wellington F. Christman was not then in the city. No, he did not appear before the Commissioner of Deeds Handel. Yes, J. C. Thickens was in the city at the time it was signed and to the best of my recollection T. R. Bailey was and I saw them sign the power of attorney. I presented this power to the various per-

(Deposition of John B. Thickers.)

sons whose names I mentioned. Explained to them the whole proposition as I understood it; that there was a chance for them to locate some lands in California; that McMurtry was an expert oil man and understood all about oil lands and there was a chance for them to locate some lands and possibly make some money out of it. After securing these signatures, the next I heard of this was sometime in 1910. Don't recall having any communication with McMurtry with regard to these transactions during 1908 or 1909, and sought no information with regard to it during that time. I really don't know why I did not sign the power except that they were all filled up and I did not even sign my name or my wife's name. In 1910, I believe Searls was on here at that time, I remember about these ratifications in 1910. Did not personally talk to the locators about executing this. I know of money having been paid out to the locators during 1910. Searls handled the transactions. Q. Did you receive any money at that time on account of these matters? A. I may have received some.

Yes, I may have procured the ratification by Wellington F. Christman, or William F. Christman—I don't recall. Yes, I [645—539] recall visiting Christman at Clinton, Wisconsin. Went there to get him to ratify the original power of attorney. May have had some correspondence with him before going. Yes, I knew of stock being given to these locators. That was in about 1910 or 1911. After the signing of these powers of attorney, believe I saw

(Deposition of John B. Thiekens.)

McMurtry personally here in 1911. Had no particular talk with McMurtry about these stock transactions. Repeatedly had talk with the signers regarding the stock transactions. They all seemed to be very much satisfied—very much pleased about receiving stock. A great many of these men worked in my office and they seemed very much pleased over the receipt of \$250 from Searls. I talked with some of these men about the transaction in which they delivered up their certificates of stock. Talked with Welch and Bailey and possibly some others. Cannot recall what any of them said after these stock transactions in 1914. Don't recall anything else occurring until the fall of 1916, then a number of the locators went to California. Mr. Helm was here and talked to me before they went to California, in about September or October. Don't know whom Helm represented. Said he was representing some oil companies in California. Don't think he said in what capacity. He was here and I saw him every day for eighteen or twenty days. Don't think I was present when he talked with any of the signers. I took him to the various places where these locators were and introduced him. Was present at some of these conversations. Don't know what Helm said to these people. No, I did not participate in the conversations. [646—540]

Cross-examination.

I hold a thousand shares of the Empire Oil and Development Company in my own name. Yes, prior to 1906, I had a good deal of talk with McMurtry

(Deposition of John B. Thickers.)

and Searls, who were with the Empire Company, about oil lands, and had heard of great fortunes that had been made in California by different people in the oil fields and about the vast acreage that were obtained from the Government by mere occupancy and drilling upon the lands, and knew from McMurtry's conversations that the mining laws required an expenditure of only \$500 in assessment work and \$100 a year after discovery of mineral—something of that kind. No, I was not on a salary as assistant treasurer of the Empire Company. Yes, I sold some stock on commission, and it was necessary to talk about the proposition, and had been advised by McMurtry and others of the large producing lands in California obtained from the Government on their locations, and in selling stock of the Empire Company and in attempting to sell it, I knew he had a general idea of what the properties of the Empire Company consisted, or was or might be, to a certain extent I knew something. No, I did not know that some of these lands were located and not patented. Yes, I knew before talking to anyone about signing these powers of attorney that the purchase price of this land from the Government was \$2.50 per acre. Yes, I know that the Empire Company discontinued doing business before these powers of attorney were obtained in 1907, because of the fact that there was a panic and it was impossible to sell stock or get money to do development work upon the property. Yes, the property that they had been on. Yes, I knew the financial condition of some of the people to whom I

(Deposition of John B. Thickens.)

spoke about signing these powers of attorney. Knew Herbert Walker, W. A. [647—541] Keenan, William Mahr, and Francis E. Pratt were in condition to have put up \$100 or \$200 a share a year for assessment work. I knew nothing as to their inability to do so. In these talks with McMurtry prior to signing these powers of attorney, McMurtry did not tell me that he wanted me to go out and get a lot of people to sign these powers so that he could control or so that he could get the lands for himself or for me—positively not. No, I had no interest in the lands located by McMurtry for these people whom I got to sign or in the lands located by those whom I did not get to sign. No, McMurtry did not say he wanted to get “dummy” locators. Yes, he said he was going out to California, and that he was going to look over the unoccupied Government lands, or lands where persons had permitted their locations to lapse, and that he wanted to be prepared, if he could, by and with the authority to act in the matter of the location of such land for actual *bona fide* citizens of the United States. No, he did not tell me not to sign the power of attorney or not to have my wife sign. Yes, there was a decidedly friendly feeling between McMurtry and myself. No, there was no understanding that I was to have any interest in the lands located in the names of any of these people: No, neither myself or my wife were promised any interest in the lands that might be located or any interest in the profits. When I spoke of having received some money at the time of the securing of this rati-

(Deposition of John B. Thickens.)

fication I referred to the money I received for expenses in order to see Mr. Christman. Searls paid my expenses to Wisconsin where Christman was then living. No, I had no correspondence with Christman before signing his name to the power of attorney. Yes, I knew thousands of people in New York at that time. No one that I [648—542] asked refused to sign this power.

Q. What reason did you have for getting your father and your brother-in-law and your uncle, Mr. Bailey, to sign the power of attorney, and yourself put the name of your uncle, Mr. Christman, upon the power of attorney? A. I felt it was a very good change for them to make some money.

I signed Christman's name because he was so far away I could not reach him quick enough and thought he could make some money. Yes, he signed the ratification after I had explained it all to him. No, none of these people who signed at my suggestion, particularly C. Rupert Walker, signed as a favor to me, absolutely not. No, I never asked Walker or any other person to sign a power of attorney as a favor to Mr. McMurtry or the Empire Company. Yes, I explained to Christman before he signed the ratification that the power of attorney to which I put his name had been recorded and that oil lands had been located under it and some contracts with Herrin and other people had been made concerning it. No, I did not then know the details of this contract. No, I was not paid anything by McMurtry or promised anything for getting signatures to these powers of

(Deposition of John B. Thickens.)

attorney nor was I ever paid anything for speaking to those people about the ratification or doing anything else for McMurtry or any of the people in these matters, except expenses on my trip to Wisconsin. No, I was not given by McMurtry or anybody else any stock in the Pacific Oil Lands Company in 1911 when this stock was being given out to the locators. Yes, it is a fact that I consented to include myself and wife in this opportunity, and have locations made in our name. Yes, it is true McMurtry limited the number of powers of attorney, that he wanted but thirty-two, and then told me [649—543] that they had all been filled up. Yes, it is true that after I had turned in my powers of attorney McMurtry told me that there was no use of his taking my power of attorney and that of my wife for the reason that he felt under obligations to make locations.. of he did, in the names of these thirty-two people who had already signed the powers. Yes, at the time McMurtry was here distributing the stock he talked to me about it. Yes, I undoubtedly saw McMurtry when he was here both in 1910 and 1911. No, I never attempted at any time to influence any of these persons as to how they should testify nor did I discuss with them what that testimony would be if they went out to California.

Redirect Examination.

At the time Walter Wilson signed this power of attorney he was in my employ receiving a salary of between \$600 and \$750 a year. C. Rupert Walker was receiving approximately the same.

(Deposition of John B. Thickers.)

Q. Were any of the persons whose financial condition Mr. Ach inquired about, or Walter Wilson or C. Rupert Walker, were they at that time in such a financial condition that they could have expended the sum of one hundred dollars for each of nineteen or twenty-four claims in the North Midway field, and one hundred dollars for each of approximately forty claims in San Benito County?

A. I don't know.

No, I did not ask Mr. Nixon to sign this power of attorney. No, McMurtry did not ask or suggest that I or my wife sign. My father had a thousand shares of Pacific Oil Lands Company—as a locator. No, no stock was issued to myself or wife, nor did I own any then or now. No, no one [650—544] held any stock in this company in trust for me, nor does anyone now so hold any. No, I have absolutely no interest and never have had in the Pacific Oil Lands Company.

Recross-examination.

Yes, my father is deceased. Oh, yes, he left me a thousand shares of stock.

Redirect Examination.

No, McMurtry did not ask me to get the signatures of any specific persons to those powers of attorney, nor did he suggest that any specific person should not sign it. [651—545]

Deposition of George F. Handel, for Defendants.

GEORGE F. HANDEL, called April 30, 1917, by defendants, testified by deposition as follows:

Am a practicing lawyer and now reside at Montclair, New Jersey. In December, 1907, resided in New York City and was a commissioner of deeds. Such officer is one appointed by the Board of Alderman authorizing the taking of acknowledgments, jurats and oaths. No, I kept no record of the persons who appeared before me. Was not required to do so under the law as I understood it. The custom was not to keep records so far as I knew. No, I do not remember of taking acknowledgment to powers of attorney to the persons who were located at 299 Broadway, New York. Yes, I knew J. B. Thickens. Met him years ago. He was a partner of Fred Nixon. Never met L. B. McMurtry. I took thousands of acknowledgments but have no recollection of any particular case. If my signature is attached to the acknowledgments, the person acknowledging appeared at the same time or someone who was introduced as such person did.

Q. It has been testified by Mr. Christman, that he was not in the State of New York in December, 1907, and it has been testified that John B. Thickens signed the name of William F. Christman to the power of attorney in this case, and that Mr. Christman did not appear before you and acknowledge the power of attorney. Can you explain the fact that the power of attorney appears to have been

(Deposition of George F. Handel.)

acknowledged by Mr. Christman before you? A. No, I cannot explain it. If the power of attorney is acknowledged by me and bears my signature, the people that executed it either acknowledged it before me or someone in their behalf did, and were introduced to me as the one. That was my custom at least. I have no independent recollection as to the [652—546] transaction at all. Q. Then at the time these various people acknowledged this power of attorney, you did not know them and you did not know whether they felt that you knew them at the time? A. A man would come in. I can explain the way it happened. I was the commissioner, and a man would come in and say, This is so and so, and so and so, and this is so and so. He acknowledges this. Do you? I acknowledged it, yes, and then I would take his acknowledgment.

Yes, I simply took the word of the man that introduced him to me as to the fact that he was the man. [653—547]

Testimony of Sue Greenleaf, for Plaintiff.

SUE GREENLEAF, called February 28, 1919, by plaintiff, testified in open court as follows:

Reside on Bush Street, San Francisco. My occupation has been practically all my life a teacher and free-lance journalist. First met L. B. McMurry in 1902 or 1903. Am the person whose name appears in these deeds (Plaintiff's Exhibits 18, 20, 22 and 24) and was present when these location notices (Plaintiff's Exhibits 17, 19, 21 and

(Testimony of Sue Greenleaf.)

23) were posted; prepared these notices myself. The circumstances under which I put these names on these notices were as follows: I came out to California to see about some oil stock I owned in the Oriental Oil Co., and while I was here Mr. McMurtry told me, in July, 1908, about the lands, and I was going to locate the lands in my own name and in the names of relations; Mr. McMurtry advised me not to have anything to do with my relations, that he had the power of attorney to act for certain New York people, and that I could use those names, and he would give me a quitclaim deed, as he was the attorney in fact. He told me that if he gave me the quitclaim deeds I would have to develop these lands at my own expense, and in the event that there were any results from the development, those people were to have an interest. Nothing was said as to what interest they were to have, except that he said it would be a nominal sum, probably depending upon what I would care to give or they might ask, and that one locator had told him he would take \$250 for his interest. Think this man's name was Seels or Searls—something like that. He said that probably the others would not want anything. There was no arrangement made by which I was to become personally acquainted with those locators whose names I used upon those locations. I recall asking McMurtry in the event we secured oil how I was to let these men know, as I didn't have their addresses, and he said through him. I never met

(Testimony of Sue Greenleaf.)

or corresponded with any of these people, and after I received these deeds (Plaintiff's Exhibits 18, 20, 22 and 24) I never had any further transactions with any of the locators either personally or through McMurtry. [654—548]

Cross-examination.

I reside at No. 776 Bush street, at the Windmere Apartments, San Francisco. Came down here to bring the remains of my mother whom I had interred at Santa Ana, and was just leaving, when I was summoned here.

In 1906 I spent the greater part of the time in Mexico and in Chicago, and I was also in New York, I believe. In July, 1908, I came to Los Angeles, California, with my mother. Prior to that time had been in Arizona where I had been conducting some mining interests that I owned in Mexico. Remained in Los Angeles during 1908, after coming here, and went up to Bakersfield and looked up these lands. Think I first went there in November, 1908. Previous to going there had seen Mr. McMurtry in California once. Happened to meet him in front of the Alexandria Hotel where I was stopping. Talked with him a few moments. Was not engaged in mining [655—549] business when I first met McMurtry in Chicago. Think I first met McMurtry in the Fall of 1906. Ever since I acquired the interest in the Oriental Oil Company stock I frequently had letters from McMurtry telling me as to the progress of development and the notices sent out by the secretary.

(Testimony of Sue Greenleaf.)

Never had any personal correspondence with McMurtry. The first time I went to Bakersfield think I spent only one night and then went out to the Stratton Water Company and stayed two or three days. McMurtry came out there about the day before I left. He took me over to see the old Oriental Oil well. I then returned to Los Angeles and was back and forth between Los Angeles and Santa Ana where I had friends. Was not in business in Los Angeles. In Chicago was a free-lance journalist and teacher. Early in March, 1909, I went to Bakersfield. I was fairly familiar with the placer mining law and had determined to locate some lands of my own.

Q. Do you know where the placer mining law is found? A. In the Revised Statutes. On which you locate placer mining lands, you mean. Q. Yes. A. I think it is in Chapter VIII, Title 32, of the Revised Statutes. Q. Where did you first see or read anything concerning placer mining claims in any law book or statute? A. Well, I think it was about in 1885 or 1886 when I was a student, and I was studying law, and I was compiling evidence on many different things pertaining to various forms of litigation, and I was particularly interested in mining because—well, I don't know why; I just happened to fancy that branch.

No, was not interested in any locations in California before I came out; not in locations directly, but indirectly through this Oriental Oil Company. Yes, I was a stockholder in [656—550] the

(Testimony of Sue Greenleaf.)

Oriental Oil Company—had a few shares. I believe about a thousand. I still have them I think. Yes, I had the Revised Statutes of the United States with me in Bakersfield. Yes, while I was at the Stratton Water Company. At that time I had quite a long talk with McMurtry about the locations he had made in that district. That was in November, 1908, I believe. Am not positive about the date, but it was when Mr. McMurtry returned from wherever he had been to the Stratton Water works. The following morning he asked me if I would like to see the old Oriental property, and I said yes. Yes, I think this was before Christmas, 1908, and after Thanksgiving day, 1908.

Q. Now, what conversation did you have then with Mr. McMurtry about oil lands, locations, or anything of that kind? A. When we were standing at this old Oriental oil well Mr. McMurtry pointed out with a sweep of his hand like this (illustrating), "All of these lands," he said, "in this direction are prospective oil lands and we have located a number of sections, and," he said, "we—the major and myself—intend to locate a hundred sections"; and I said, "Well, I wish I knew some good prospective lands, the actual sections, township and range," and he says, "Well, there is no use; I am going to locate them all. I have located a good many, but I am going to locate all of these." And I remarked to him, "Well, why did you, then, tell me—or tell my mother, rather—that if I would come up here you would point out some prospective

(Testimony of Sue Greenleaf.)

good oil lands to me?" He hesitated a moment and then he said, "Well, I will change my mind; I won't locate them all, and I will tell you where you can get some pretty good prospective lands. I did tell your mother that." He says, "But take my advice and don't locate them in the names of your family." [657—551] Q. That was, then,— A. Right then and there, yes. Q. Right then and there? A. Yes. Q. And he volunteered the advice not to locate them in the names of your family? A. Absolutely. I had never dreamed— Q. Why did he tell you not to locate them in the names of your family? What reason did he give you? A. The reason he gave was—I said to him, "Why?" I said, "My mother"—and I mentioned other members of my family, including myself as one of the right locators. He says, "Because they will always be nagging you,— "What have you done? What have you done?" and he says, "They will just keep that up until you go mad." Q. You discussed with Mr. McMurtry at that time how much money it cost to locate the lands? A. Well, I knew approximately. I don't think I discussed it with him. Q. Were you a lady of means at that time? A. I had some money; yes, sir. Q. And did you know what was necessary in order to prospect oil lands? A. I knew what was then considered necessary; but we have learned something since. Q. What did you then think you knew about that?

Mr. HALL.—This was not brought out on direct examination, your Honor.

(Testimony of Sue Greenleaf.)

Mr. ACH.—It is part of that conversation.

The COURT.—Yes, it is part of the conversation.

A. What did I think was necessary?

Q. (By Mr. ACH.) Yes. A. Well, first I had to put my locations on; then, in order to follow the law, I had to file them for record, which I did, and paid for them, and I received my quitclaim deed. I received from Mr. McMurtry— Q. No, you are getting away from the question. What did you think was necessary to develop— A. Well, that was necessary. To begin the *modus operandi* or procedure I had to have something [658—552] before I could do anything, didn't I? Then I got the deed. Then I had, before coming to California, a tentative proposition with the gentleman who had a great deal of money that in the event that I secured anything good either in oil lands or placer or other lands he would see that they were properly financed. So this man at this time was in London, and his name was John Weir, and I had known him for a number of years. Q. Well, did you know that you had to do any work on the land? A. Yes, I knew I had to do a hundred dollars worth of assessment work each year to comply with the then placer mining law. Q. Until when? A. Until I struck oil. Q. That was your understanding then, was it? A. That was my understanding then, yes. Q. You availed yourself of the suggestion made to you by Mr. McMurtry at that time, did you not? A. I did, yes.

Yes, in March, 1909, I was in Bakersfield stop-

(Testimony of Sue Greenleaf.)

ping at the Southern Hotel. McMurtry was there on the 8th, I know, because he made the deed, I think, on that date. I believe that was the date of the deed. Yes, I was out in the Midway mining district where the Stratton Water well was in March, 1909. Yes, I know a man by the name of Abbott. Met him in Los Angeles. He was going to take hold of the land up there. He said he was going to develop part of the lands with me. Yes, he went out into the field with me and was there when these locations were made. I think I introduced him to McMurtry. Am almost positive that I did. No, I did not tell McMurtry that Abbott was going to be interested with me if I got any oil land. I told McMurtry that Abbott came up to look over the situation and that probably he would be interested in some of the lands for himself and he might become interested in some of those. I know where sections 32 [659—553] and 28, township 31, range 28 are on the map. No, I don't recall where they are if I ever knew them. Yes, I certainly know where section 4, T. 31-23 is and where sections 6 and 10 are.

Q. Now, who picked out any part of section 4 or section 6 or section 10 to be located that day by you in the name of these locators? Who picked out those quarter-sections? A. The evening before I went out to locate them Mr. Kay and this mining engineer came over to the Santa Fe Company's office—headquarters—where I remained that night and laid the maps out, and I myself picked out the

(Testimony of Sue Greenleaf.)

sections that seemed to me—of course I am a novice—but that seemed to me to be along the line of the so-called anticline, and when I picked out the corner, those up there in No. 6, 31-23, they seemed to think I was foolish. Q. Who were “they,” Mr. McMurtry? A. No, I don’t think he came over there from the Stratton Water Company that evening. I am not sure whether he did or not. Q. Then it was you who picked out those sections to be located that were named in these locations Mr. Hall drew your attention to? A. Well, any specific one of them. But in a general way the whole district pointed out to me as being— Q. Yes, but as to picking out these specific lands which were described in these location notices which you say you drew, you are the person who picked out the specific quarters? A. Well, yes, following the advice, however, that they were all seemingly good prospective lands. Q. And who gave you that advice? A. Well, Mr. Kay. Q. Who was Mr. Kay? A. Well, Mr. Kay seemed to be a friend of Mr. McMurtry’s. I had never met him. Q. Was he a friend of yours? A. No, sir. I had never met him until that day when I got off the train. Q. Well, now, I don’t [660—554] mean anything offensive by this question, but did you at that time claim to possess any occult powers of ascertaining where oil was? A. I never claimed to possess any occult powers whatever. Q. There are people, you know, who do claim that. A. Yes, some ignorant people do, I suppose. Q. Did Mr. Kay or Mr.

(Testimony of Sue Greenleaf.)

McMurtry or any of those people tell you why they had not located these lands themselves before that time? A. I don't think they did. Q. Didn't tell you why they were letting that good thing go by and using your good offices to help them locate it, did they? A. To help them locate it? Q. Yes, to help them locate it. A. Well, it was my understanding that they had all the lands that they seemed to think they could finance. Q. Did they tell you that? A. That was my understanding. Q. Did they tell you that? A. I don't remember. Q. Where did you get the understanding? A. Well, from different conversations, different remarks that had been made. Q. By whom? A. By the different men. Q. What men? A. Mr. McMurtry, Mr. Kay, and— Q. Now, Miss Greenleaf, you said, if I understood your testimony correctly, or your evidence, that you drew or prepared these location notices. A. I wrote them out, yes, sir. Q. In pen and ink? A. I think I wrote them with an indelible pencil. Q. And where, or at what place, did you write them? A. On the ground. Q. On the ground? A. Yes, sir. On the quarter-section where each quarter-section was located I wrote—

Mr. ACH.—Excuse me—

Mr. HALL.—Let her answer.

A. (Continuing.) On the quarter-section on which I placed the location I sat down there on the ground and I wrote, I believe, with an indelible pencil, the names of these locators right there, [661—555] and put the date down, the hour and

(Testimony of Sue Greenleaf.)

all. Q. Did you have printed locations? A. Yes, sir; they were printed. Q. Where did you get these printed locations? A. I bought them in Bakersfield, I think, at some stationers. I am not positive now.

Q. You don't remember? A. No. Q. How long before you went out there, then? A. Well, I had had those, I think, ever since the first time I went up there. I am not positive, however, about that.

I know I did have location notices— Q. Now, who was with you when you did that? A. When I placed them on? Q. Yes, when you wrote them?

A. Mr. E. W. Kay, this mining engineer, and this Mr. Abbott, and myself. There were four of us right there. Q. That is, Kay, Abbott, yourself, and

who else? A. Well, this mining engineer, whose name I cannot recall. He was an elderly gentleman, but I had never met him—

Q. Who gave you the description of the property? A. Well, the geographical description—I believe it was Mr. Kay—

or this surveyor. Q. Who? A. This gentleman was a surveyor, I think, as well as a mining engineer, and I believe they found the corners. Q. And

these notices that you had then were never in the hands of Mr. McMurry, were they? A. Well, except indirectly. Q. How do you mean, indirectly?

A. Well, he had them in his hand and looked at them, if that is what you mean. Q. Before you made them out? A. Oh, no. Q. After you made

them out? A. After I made them out, I think. Q. Well, after you made them out you posted them on the land, did you? A. Yes, we posted copies on

(Testimony of Sue Greenleaf.)

the land, and the originals— Q. Did you make more than one copy of the location notices? A. Yes, sir. Q. How many did you make? A. I think I made three. Q. And what did you do with them when you got back to the camp? A. I then took these notices to Bakersfield and [662—556] filed them for record, keeping my own copy which I have in San Francisco.

Q. How many different locations were made, of which you have a copy? A. Well, I located, I think, all four on section 6, and I believe it was all on section 4, and I think half of section 10.

Yes, that would be at least 10 locations of which I have the original notices at home after having had them recorded. I named each of these claims, but don't believe I can recall the names now. Yes, I recall why I named one of these "Georgia" Placer Mining Claim. That was because my grandmother was born—well, she was not born in Georgia, but she had a great many relatives who lived there, and I was very fond of them, and I thought I would name them all, at one time, after the states in which different relatives were born. No, I didn't name these locations in that way. I said I had that in mind, but I didn't name them after different states, not all of them. Yes, Mr. McMurtry told me that if he were in my place he would not locate these lands in the name of relatives because they would be pestering me all the time and wanting to know what was doing and what I was getting out of it and all that sort of thing. He told me that while

(Testimony of Sue Greenleaf.)

we were standing on the Oriental oil well property.

Q. At which time he said to you: "Well, I won't locate all this land; I have got more than I can finance now, and you can go and locate this, that and the other, and I have got some powers of attorney, and am representing some people, and I will let you have their names and then you can—depending on what you get out of it—fix the matter up with me." Something like that, was it not? A. I don't think he used those words—"fix it up [663—557] with me." He said his locators would have an interest in the lands. Q. And at that time, in November, 1908, he actually pointed out to you certain lands that he would let you locate in that way, did he not? A. He pointed out this way (illustrating) with a sweep of the hand, the Buena Vista Hills, and he says, "Over there lie some lands that I had intended to locate," and I believe he said he had already located some in that particular vicinity, and he had intended to locate a large amount of acreage in addition, and he says, "Now, I have reconsidered." So he says, "There is some over there that are prospectively good, and if you want to locate on them all right." Q. He told you not to use your relatives' names, didn't he? A. He advised me not to use my relatives' names. Q. And what did he say to you at that time and place upon your first visit to the field about what he had done in the way of locating and in whose names he had located? A. He told me that he had located a good many sections in the names of certain people, I be-

(Testimony of Sue Greenleaf.)

lieve from New York, through power of attorney, which he had gotten to use their names in the location of these lands. Q. And told you that he would let you use the names of those people? A. Yes. Q. And told you at that time that if you got anything out of it, why, you could fix it up with him? A. I don't think he used those words. Q. Well, I don't mean to charge you with using the word "fixed"—but settling it with him, or arranging it with him, or giving him a nominal sum, as you said, for the use of those names. A. At that time the only offer I remember Mr. McMurtry having made in reference to what the locators would get was that they would have an interest. Q. That they would have an interest? A. That they would have an interest. Q. But the interest was not defined? A. The interest was not defined at that time. Q. And did you [664—558] acquiesce in the proposition? A. Yes. Q. You told him all right, you would use them; is that right? A. I told him all right, I would use them, yes. Q. Well, then, why didn't you go out and do it, then, at once? A. I told you it was so very rainy it was almost impossible to get into the fields. Q. But there were men there that could have gone out and— A. I want to do it myself. I have always been in the habit of attending or attempting to attend my own business, and I wanted to put them on with my own hands, to see that they were there. Q. You received the promise from Mr. McMurtry that he would go out and locate those lands himself, but would keep

(Testimony of Sue Greenleaf.)

apart certain lands that you could go out and locate on in the name of his locators. Was that agreed to then? A. He did not specifically state any sections, but he said he would not locate all of these lands. And I was glad there was a little of the public domain being left. Q. And he was leaving it for you? A. Well, for anyone who might chance to care to locate it. Q. And he told you at that time that some one man you could fix for \$250. A. Not at that time. Q. When did he tell you that?

A. Some time subsequent to that. I don't remember the date now. Q. How long subsequent to that? A. A few months. Q. After the location was made? A. After the location was made, yes. Q. After the location was made he said you would get one man's title for \$250, didn't he? A. He said this one man had told him he would take \$250 for his interest. Q. For his interest? A. Yes, for his interest. Q. Now, up to the time that you returned to Los Angeles did you go to the records of Kern County and run down the condition or the situation of any of the lands in the Buena Vista Hills? A. I did.

Q. Who went with you? A. I had a Mr. Clark, I think was the gentleman's name, who was [665—559] connected with some mortgage company there— Q. Abstract company? A. Abstract company. Q. And did you do that before or after you went out into the field? A. I did that before. Q. You had never been out there in your life, and you went to the abstract company and got them to do what for you? A. I did it myself. Although

(Testimony of Sue Greenleaf.)

Mr. Clark had given me—I had probably 50 or 60 sections along in the Buena Vista Hills; I had the numbers of probably 50 or 60 sections, and I had Mr. Clark look over those to see if there were any recent locations or any locations in past years that had kept up their development work, and he picked out certain sections that he said there was nothing on the books to show that they had ever been located—or that the law had ever been complied with; no work had been done, or at least not recorded, and no locations had been placed on there for—some of them extended back as far as ten or fifteen or twenty years—and nothing had been done.

Q. Then up to the time you returned to Los Angeles you had not seen any power of attorney that Mr. McMurtry had from any of these New York people?

A. Yes, I had seen it. He had shown me his power of attorney. Q. And you read it? A. I read it, yes, sir.

Q. And that was while you were out there at the Stratton Water Company? A. I believe Mr.

McMurtry first showed me the power of attorney at the Alexandria Hotel before I ever went up to the Midway. Q. That was before November, 1908?

A. Yes. That was some time in July or August, 1908. Q. And did he tell you at that time that he

had located any lands under that power of attorney in the Midway district? A. Yes, I think he told me he had, or was about to. I think he had.

Q. And you read that power of attorney then, did you not? A. I read that power of attorney, yes.

Q. And when did you next see it? A. Well, I think

(Testimony of Sue Greenleaf.)

I looked over it—read [666—560] it over very carefully, up at the Stratton Oil Company, along in November or December, 1908. The names I wrote on these location notices were taken from the powers of attorney, which names were given me by McMurtry. I gave McMurtry nothing for these deeds. I told him I thought I would be able to finance the development of the lands, and in that event the persons whose names were used would get something out of it. [667—561]

Testimony of Earl S. Shaw, for Plaintiff.

EARL S. SHAW, called February 24, 1919, by plaintiff, testified in open court as follows:

I live in Bell Ridge Oil District and am superintendent of a lease for the Pittsburg-Belle Ridge Oil Company. Have been in the oil game since 1905, working from the bottom up. Was employed in the Midway field in 1908, on what is now the California Midway Oil Company's lease, which lease was in charge of David Kinsey, who was superintendent all the time I was there, a little over a year from December, 1908. When I went there most of the equipment was on the ground. They had equipment on the ground for other wells and we worked on all of them. The derrick was not up when I went there, but was erected shortly after and we began drilling on well No. 1 early in 1909. The location of this well was not changed after I went there that I know of. The northwest corner was across the road from well

(Testimony of Earl S. Shaw.)

No. 1, and I have a faint recollection of there being a location notice there.

Q. The records of Kern County disclose that on January 1, 1909, a location notice was posted upon the southwest quarter of section 1, in township 31 south, range 24 east, M. D. B. & M., and that the claim was called the "Mischieff No. 12" Placer Mining claim, upon which the names "Herbert M. Walker, H. E. Bashore, R. B. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz and William Mohn" appear, and the witnesses to the posting were Earl S. Shaw and David Kinsey. Are you the Earl S. Shaw whose name appears upon that location notice?

A. Well, I would like to say that on the 1st of January, 1909, I made a trip with Mr. Kinsey for the purpose of locating lands, and at that time we did use some names. Now, I don't know whether those are the names or not. At that time I knew what section I was on, because we found the stakes, but now I couldn't say whether that is—[668—562] any more than to see my signature on it—I did witness the location of I believe it was thirteen quarter-sections of land on that particular night, but now I couldn't say on what section or on what quarter-section we were.

Q. But you did put your name as a witness on thirteen of these location notices? A. I did put my name on some papers as a witness of location. Q. Did you have any interest or claim any interest in those lands upon which those notices were posted?

(Testimony of Earl S. Shaw.)

A. I thought I had an interest at that time. That was my understanding. Q. And with whom did you have that understanding? A. I had an understanding with Mr. Kinsey. I went out with him and paid half of the expense of going. Q. How much were you to get out of these locations? A. Well, when I went out there was no particular understanding of what my interest would be, but we got out there early and built a bonfire and spent an hour or so trying to keep one side warm while the other was freezing, and Mr. Kinsey and I decided that I would get— We intended to locate—as I say, I believe there were thirteen quarter-sections, and I was to receive either one quarter-section or a one-thirteenth interest in the whole. Didn't know how Mr. Kinsey had obtained the names we were using any more than that I understood the people were his clients and that he had the powers of attorney for them. I didn't know any of these people personally or have any business dealings with them.

Cross-examination.

I was a tool-dresser and workman when I went to work on the California Midway lease. No, I knew nothing about the policy or its management or affairs. It was the evening of December 31, 1908, that Kinsey and I went out to locate lands. Had then worked for Kinsey a couple of years. Oh, yes, I talked with McMurtry. No, not about these locations. Kinsey and I talked about going out to make these locations two or three nights before we went. Don't remember just what the conversation was. I

(Testimony of Earl S. Shaw.)

had been with him before on similar missions. Yes, he told me before he started that he knew some lands that he wanted to locate at midnight, [669—563] December 31. Yes, the lands had been located by other people who had put nothing on them. Don't know why my name wasn't used as a locator. I had acted before as a witness in locating lands with Kinsey. Q. Well, I want to get at why it was that you, who were an *employ* of Kinsey there, working around the place, were called upon by him to go on that midnight ride of Paul Revere and he promised you a one-thirteenth in anything he would locate. Q. Well, I guess I will have to tell you as long as you would like to know. I was in the field a number of years before that, and not only Mr. Kinsey but myself had been out on just such expeditions as that for a firm that we were working for, and had assigned our rights, and we didn't see where we got anything out of it, and we wanted to get something for ourselves—a man will naturally look out for his own interests—and it was customary at that time to locate lands, and we thought we might possible have a little bit ourselves. Q. And you knew that by putting your own name on that location notice and locating in your own name you would get that interest and would not have to give it up unless somebody paid you what your price was, didn't you? A. Yes, sir, I knew that. Q. Now, is it not a fact that you did not know before you started out how many different quarter-sections you were going to locate? A. That

(Testimony of Earl S. Shaw.)

is a fact. Q. But when you got out there and after you located them up and found you had located thirteen. A. Yes, sir. Q. That is right? A. Yes, sir. Q. Then after that Dave Kinsey said to you that he would talk to the parties in interest and make or get them to deed to you one quarter-section or give you a one-thirteenth interest in consideration of your having made that ride that night; is that right? A. Well, he didn't know anything about what I was going to do, but I would understand, and understood from what he told me, that [670—564] he was able to make the arrangement. I didn't know how he was going to do it. Q. That was after the locations were made? A. Yes. Q. Then you figured up how many you made, and Dave thought you were entitled to a one-thirteenth for standing out there and getting cold on one side of your body? A. Yes. Kinsey did not say how much of this land he was entitled to. We were out nearly all night. It was about 10 or 12 miles from the California Midway lease to where we made these locations. Never talked to McMurtry about the matter and never got the one-thirteenth, not that I know of. Yes, I asked for it; asked Kinsey. [671—565]

Testimony of Peter R. Longley, for Plaintiff.

PETER R. LONGLEY, called February 28, 1919, on behalf of plaintiff, testified in open court as follows:

Am in the real estate business and reside at Hollywood, California. Have lived in and about Los

(Testimony of Peter R. Longley.)

Angeles the last fifteen years, engaged in the real estate business. Have known J. M. McLeod about 14 years. In 1909 was secretary of Winton & McLeod Company, real estate, No. 330 South Hill Street, Los Angeles, and was looking after Mr. McLeod's business, doing correspondence as his secretary, and from time to time transmitted by mail papers relating to real estate transactions.

Q. Now, I invite your attention to a location notice of a placer mining claim on the northeast quarter of section 9, township 32 south, range 23 east, M. D. B. & M., which was made on the 1st of January, 1909, and upon which the names of the locators are Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder, and F. H. Searls. Were you ever interested in any way in that particular quarter-section which I have just described?

A. I was.

Became interested in that quarter-section through Mr. McLeod and Mr. Loughlin. I disposed of my interest; transferred it to the Chanslor-Canfield Midway Oil Company (Plaintiff's Exhibit 48) for \$4,000. I did not give any part of this to the persons in whose names the location was made. Mr. Loughlin, Mr. J. M. McLeod and myself were equally interested in this land.

Cross-examination.

I did not conduct this transaction or negotiation and had nothing to do with making this location or procuring the drafting or execution of any of these papers. [672—566]

Testimony of L. B. McMurtry, for Plaintiff.

L. B. McMURTRY, called March 3, 1919, by plaintiff, testified in open court as follows:

I reside in San Francisco and am one of the defendants. Am interested in mining and have been for probably twenty-five years, in California, Nevada and Arizona. Have also been engaged in oil interests. First became interested in prospecting and developing oil lands about 1898, in the Kreyenhagen district near Coalinga, and from that time have been engaged in locating mining claims upon the public domain and in development of oil on patented and unpatented lands in California. The first company I was interested in was the Oriental Oil Company, in about 1898; the next was the Midway Oil Company, later known as the Midway Oil Company of Oregon, whose main office was at Portland, Oregon, and a branch at San Francisco. This company operated or attempted to develop oil lands in the Midway field, in sections 7, 8, 9, 10 and 4, 32-23; approximately half each of sections 32 and 28, 31-23. Am not positive whether this was the north or the south half of section 32. This company retained possession of these lands until about December 31, 1905. Think these lands were all opened during the year 1906. I claimed no possessory right to them either individually or through any corporation during that year.

Q. The records of San Benito and Kern Counties disclose that there are therein recorded two powers of attorney given—one by Bert S. Denison, Hoka

(Testimony of L. B. McMurtry.)

Roll, Thomas H. Lee, J. L. Bacon, J. H. Dalbert, W. G. Mahoney, H. Baggenbuck, R. E. Pierce and others, which is acknowledged on the 21st of December, 1903, before W. R. Love, a notary public; and another power of attorney given by F. P. Blackman, A. J. Rowley, Harry Sterling [673—567] and others, acknowledged December 30, 1903, before W. R. Love, Cook County, Illinois, by which these several persons whose names appear upon these powers of attorney purported to have appointed and designated L. B. McMurtry of San Francisco as their attorney in fact for certain purposes therein set forth. Are you the L. B. McMurtry whose name is therein mentioned? A. Yes, sir.

Those powers of attorney were delivered to me some time during the latter part of 1903, but I haven't them. Lost them in New York. These powers of attorney were prepared by an attorney for me and the forms were in my possession before they were signed. No, I had no conference with any of the individuals who executed these powers of attorney before their execution. I knew C. A. Dunbar, but had no conference with him in regard to the execution of these powers of attorney.

Q. What did you do with the powers of attorney after your attorney at law prepared them for you?

Mr. ACH.—I make the same objection. And may it be understood that I am objecting to all the questions which are asked this witness of and concerning his dealings with the power of attorney of 1903 upon all lands other than section 32 involved

(Testimony of L. B. McMurtry.)

in this case, or the northwest quarter of section 32, as incompetent, irrelevant and immaterial?

The COURT.—Very well; the objection is overruled.

Mr. ACH.—Exception. Now, may I also have the same objection to all these questions concerning any of the doings of the Chicago locators at all as incompetent, irrelevant and immaterial?

The COURT.—That will be understood, and the same ruling made.

Mr. ACH.—And an exception to each ruling. [674—568]

The COURT.—Yes. For all of the defendants.

A. I had them in my possession probably a year prior to having them signed at this time.

No, at the time I had this power of attorney prepared I did not contemplate any particular individuals who would execute it. Just prior to its execution I think I gave it to L. A. Chadburne, who was an employee of the Oriental Oil Company selling stock in Chicago. No, I had no conversation with Dunbar in regard to the execution of this power. I asked Chadburne if he could get thirty-two locators to sign that power of attorney for the purpose of locating some land in San Benito County. Don't remember just what he said, but probably said that he would see Mr. Dunbar if he could get it done. No, at that time did not contemplate the use of this power in the Midway field. At that time I had no land in the Midway field under location. When this power of attorney was returned to me the names

(Testimony of L. B. McMurtry.)

were appended to it. The names then on it were slightly different from those in the certified copy as there were some errors made in the names when being transcribed by the recorder. Yes, there were thirty-two names on the two powers of attorney when they were returned to me. No, there was no conversation or talk between myself and any one of the thirty-two locators or persons whose names appeared on the powers of attorney other than C. A. Dunbar, in regard to its execution. No, I was not acquainted with any one of these thirty-two persons other than Dunbar, and never met any of them until 1916, or had any discussion with any of them in regard to my relations with them under the power of attorney prior to that time. Don't remember that I ever had any discussion with Dunbar or talk with him in regard to my relations with him [675—569] as attorney in fact under this power of attorney. These powers of attorney were delivered to me during the latter part of December after their execution and the first act done under them was that I located some land in the San Benito field in about 1904, I think. The first time they were used in Kern County in the Midway field was in January, 1907, when locations were made in sections 20, 22, 26, 32 and 34 in 31-23; section 4, and the NE.¼ of section 9 in 32-23. I think that was all. Yes, at the time I made these locations under these Chicago powers of attorney I was interested in the Empire Oil & Development Company, which I think was organized in 1905. I think about one-half of those

(Testimony of L. B. McMurtry.)

locations made under those powers of attorney were transferred to the Empire Oil & Development Company. I was president of the Empire Oil & Development Company during a portion of 1905, 1906 and 1907, and active in the management of its affairs. No, the Empire Company, during 1907 or thereafter, did not claim any interest in the lands located by the so-called Chicago group of locators in the month of January, 1907, nor did any company with which I was associated. No one looked after these locations in the Midway field that I know of. No, I did not visit any of these locations or lands covered by them during 1907 for any purpose. No, I was not there after their location in 1907. Was there during 1908—frequently, from about September, during the remainder of the year 1908. We lived at the camp of the Oregon of Midway on the NW.¼ of section 8, 32-23, during that time. We were there having the lands resurveyed, getting the proper locations,—the prior surveys had been wrong and we spent two or three months getting the land surveyed and getting it into shape, and having the land properly staked and quarter-staked so that we knew our positive locations. When I say “we” I mean Major [676—570] Hoeppepner, F. E. Harrison, E. W. Kay and myself. I don’t remember that there were any particular arrangements with Mr. Harrison or Mr. E. W. Kay. Mr. Hoeppepner, as he had been of a great deal of assistance to me,—in fact without his assistance I never could have located any of the property,—I

(Testimony of L. B. McMurtry.)

had promised him that he should have one-half of whatever I got out of the property. There was nothing specific as to the Chicago locations. It was whatever we got out of the property, irrespective of how the locations or how the property was secured. Don't remember that there was any arrangement made as to the compensation to be paid Kay or Harrison. No, I didn't call upon any of the Chicago locators during 1908, to advance any money for the development and the doing of this work which you have described. Major Hoepfner advanced whatever expense was advanced for that purpose during 1908. Yes, the N.½ of section 32, 31-23, was part of the lands that I, Hoepfner, Harrison and Kay were looking after during 1908.

Q. In 1908 did you make any contract with any person for the development of the north half of section 32, 31-23? I invite your attention to the contract which has been marked Plaintiff's Exhibit No. 36 and is dated October 8, 1908 (exhibiting document to witness). Is that the contract that you refer to? Will you examine it? A. Yes, sir.

No, I don't think that I entered into a contract with Mrs. McLeod about that time affecting section 4, 32-23. After entering into this contract with Mrs. McLeod on October 8, 1908, I and my associates Hoepfner, Kay and Harrison, did no further work on section 32. Yes, during 1908, I was also holding section 28, 32-23. No, not under the Chicago locations. Yes, during [677—571] 1908,

(Testimony of L. B. McMurtry.)

I learned that there were defects in the locations made under the so-called Chicago locators or Chicago powers of attorney. There were defects in both powers of attorney. In the names used on the northeast quarter-section there were five separate and distinct errors, if I remember correctly. Three of the names were absolutely changed. W. J. Nicholls was recorded, according to my recollection, as J. Michals. Price was changed to Pierce, or Pierce was made Price, in the recording of the power of attorney, and W. W. Converse I think was recorded as A. A. Converse—or if it was A. A. it was recorded W. W. I know the initials were changed. Then there were two others, I think, in the northeast quarter. Yes, the correct names were on the location notices. The defect was in the recorded power of attorney. I learned of this in the latter part of the year. I was negotiating to sell the northeast quarter of section 9 to the Chanslor-Canfield Midway Oil Company and this error was discovered in October or November, I think. It was after I made this contract with Mrs. McLeod on October 8, 1908. J. M. McLeod acted for Mrs. McLeod in the negotiations concerning this contract of October 8th, and I saw him quite frequently, probably on an average of every week. Yes, I advised him of the discrepancies or defects in these locations or in this power of attorney, shortly after I learned of the defects, which was prior to January 1, 1909. No arrangements were made between me

(Testimony of L. B. McMurtry.)

and McLeod in order to obviate these defects. I don't remember that the matter was discussed. I have a dim recollection of telling McLeod that the matters would be adjusted satisfactorily. I can't say just what I meant by that, because I don't know just what my thought was at that time. I thought perhaps they might be corrected from [678—572] Chicago, or some other way. I knew there would be some remedy for it in some way. Yes, I sought legal advice—from C. L. Claflin of Bakersfield. Don't think McLeod was present when I was advising with Claflin prior to 1909. It was in the Midway field that this conversation took place in which I advised McLeod of the defects and that I would remedy the same. Don't know exactly where. Can't say just what the conversation was or the extent to which I told McLeod of these defects. Recall discussing this with him only once. I was in New York during 1908. Was president of the Empire Oil and Development Company. The assets of this company was an option on the property known as the Midway of Oregon, some other leases, and a portion of the San Benito property. The Oregon of Midway property was the south half of section 5, and the northwest quarter of section 8, 32-23. I don't remember what other property. No, I don't think the Oregon-Midway property that we had under lease affected the NW.1/4 of section 32. I think the Empire Oil and Development Company also claimed under leases section 32 in 31-23 and

(Testimony of L. B. McMurtry.)

about seven or eight thousand acres in San Benito County, all of which were held under location and were not patented. I don't think any of these lands were held under locations made under this so-called Chicago power of attorney.

Q. The records of Kern County also disclose that there are therein recorded four powers of attorney, one executed on December 20, 1907, by Samuel R. Banks and others; and one executed on December 19, 1907, by Herbert M. Walker and others; another executed by Francis E. Pratt and others on December 19, 1907; and one executed by Frank D. Taylor and others on December 18, 1907, by which these people purported, through and by means of these four instruments, to appoint a man named [679—573] L. B. McMurtry as their attorney in fact for certain purposes therein designated. Are you the L. B. McMurtry whose name appears there? A. Yes, sir. Q. Did you solicit or in any way have anything to do with the execution of these four powers of attorney? A. Yes, sir, in a measure. Q. What did you have to do with the execution of these powers of attorney?

Yes, I caused these original powers of attorney to be prepared. I was not present when any of these people executed these powers of attorney. I asked F. H. Searls, C. W. Thorn, J. B. Thorn, and Edwin L. Powell to get these powers of attorney executed. We had been discussing the financial condition of the Empire Oil and Development Com-

(Testimony of L. B. McMurtry.)

pany and my inability to get back in California in time to get the powers of attorney signed here, because I had to use them on the 1st of January, 1908, and I asked them if they could get me thirty-two locators. They said they could without any trouble. And these powers of attorney were got for the purpose of locating the San Benito lands; and if the property proved to be profitable we would make some money out of it. My impression is that this conversation took place about December 17th. At the time of securing these powers of attorney it was my intention to use them on whatever vacant lands there happened to be in what we felt was the oil belt in San Benito County. These powers of attorney were delivered to me the day I left New York. No, I had no conversation with any of the persons who signed them in regard to the location of lands thereunder, nor did I by writing or otherwise communicate to them any of my plan or intention other than the three named. The only locations made under these New York powers of attorney or contract in 1908, were in San Benito County. The first [680—574] location made under this in Kern County was January 1, 1909. It was the very latter part of 1908 that I determined to use these New York locators in relocating this land in section 32. No, I didn't have any communication with any of the Chicago locators on this subject and did not advise them of my intention to relocate the lands by the use of the New York powers of attorney. No,

(Testimony of L. B. McMurtry.)

prior to the use of the New York powers of attorney I did not advise any of the New York locators of my intention to employ their names upon the northeast quarter of section 32, 31-23. It was some time during August, 1910 that I first advised the New York locators that I had so used their names. Yes, I relocated other lands in Kern County by means of New York powers of attorney which had been located under the Chicago powers of attorney. No, I did not advise the Chicago locators of any of these transactions. Yes, during November and December, 1908, and January, February, March and April, 1909, I observed the progress of the development and improvement that was being placed on the north half of section 32. J. M. McLeod, I believe, had charge of the work under the contract I had made with Mrs. McLeod October 8, 1908.

Q. When did you first contract with J. M. McLeod or Mrs. J. M. McLeod, or any other person, firm or corporation, for the development of the northwest quarter of section 32 after January 1, 1909? A. I cannot give you the exact date, but between the 2d and the 6th of January, 1909. Q. What arrangements were made and with whom were they made? A. Along the lines of that agreement of May, 1909, with a slight exception, but I forget what the difference was; there was a little change in it. Q. With whom did you make that arrangement? A. J. M. McLeod. Q. Did you

(Testimony of L. B. McMurtry.)

carry on these negotiations with Mr. McLeod in January, 1909, because of the negotiations with Mrs. McLeod in October, 1908? [681—575]

A. I do not remember of ever having signed any contract or agreement of any kind with Mrs. J. M. McLeod until, I think, May, 1909. That is the first recollection I have of Mrs. J. M. McLeod being a party to any of these agreements.

Q. (By the COURT.) You saw that contract?

A. Yes, sir, I saw that contract, but I have no recollection of it. Q. Oh, no personal recollection of it? A. I have no personal recollection of it. Q. Well, you knew that prior to January 1st, 1909, Mr. McLeod was carrying on these operations on section 32, did you not? A. Yes, sir. Q. And you knew that you had some arrangement with him by which he was there by your permission and your consent, did you not? A. Yes, sir, undoubtedly. Q. Now, were your negotiations in 1909 and the first part of January, 1909, between you and Mr. McLeod because of the relations which had existed during the months of October, November and December, 1908?

A. I don't think it had anything to do with any agreements that we had prior to January 1, 1909. The new contract was made for the purpose of developing that property under the New York locations. Q. (By Mr. HALL.) Were the terms practically the same under the old as under the new? A. I don't remember, Mr. Hall. Q. Did you attempt to lease this land to anyone other than Mr.

(Testimony of L. B. McMurtry.)

McLeod, or the interests which he represented, after January 1, 1909? [682—576]

A. No, sir. I entered into a written agreement with Mr. McLeod in regard to these lands between January 2 and January 6, 1909. I don't know where that contract is. Don't think it was ever recorded. Don't know what became of it. The last I saw of it was about the middle of May, 1909. McLeod asked me to make a new arrangement—making small change with regard to getting—asked me if I would make out a new agreement, and he surrendered the agreement made along about the first of January, and we made this agreement of May 17th, 1909. Did not advise any of the New York locators of the arrangements with McLeod concerning this land. It was about July 10th that I began to negotiate with representatives of the Associated Oil Company for transfer to them of this land. I dealt with Mr. Scribner through agents Garrett & Watson, which resulted in the contract dated August 4, 1910. The Associated required me to get ratifications of the thirty-two locators and at that time I [683—577] did not have a great deal of money and they agreed to advance me \$5,000 with the understanding that if I did not get the ratifications I would refund the \$5,000, and they advanced me \$5,000 under that arrangement. They demanded that each of the locators sign the form of ratification given me which was prepared by the attorney for the Associated Oil Company, and I

(Testimony of L. B. McMurtry.)

took it to New York in August, 1910, and personally secured some of these ratifications. Did not see these locators all together. Saw them separately. I explained to each one whom I got to sign the ratification just what our deal with the Associated Oil Company was and just what the ratification meant. Some of these men were paid at that time \$250 by checks signed by Mr. Searls. Yes, those were the checks that bore the so-called assignment or release on the back of them. I think I had sent the money to Mr. Searls prior to going to New York. No, this money did not come from the contract with the Associated Oil Company. It would be rather difficult to say whether any of it came from the sale of the lands located under the powers of attorney of the New York people as there was some of that money in my account in the bank, but just what portion of that might have come from the lands I cannot answer. Part of these locators were paid \$250 in September, 1910, and part in September, 1911. They were all not paid in 1910 because I did not have the money. There was some money deposited in the Bank of California under this Associated contract while I was in New York in about September, 1910. I think it was \$25,000, and from time to time I received further payment from the Associated Oil Company on account of this contract of August 4, 1910. Yes, I made the deeds as attorney in fact for these various locators to the Herrin grantees and the Associated Oil Company

(Testimony of L. B. McMurtry.)

took possession of this property under [684—578] this contract. The NW.1/4 of the NW.1/4 of Section 32 was sold by me to the Columbus Midway. We were to receive \$12,000 for this, and I actually received something over \$10,000 for this 40 acres from the Columbus Midway Company. Afterwards the Columbus Midway Company conveyed this land to me. No consideration passed from me to this company for this conveyance except the forfeiture of the payment for the property. I was in New York approximately two months, on this visit in September, 1910, then returned to California and again visited in New York in 1911. No, I had no communication with any of these locators between these two visits save and except Mr. Searls. When I went to New York in 1911, I delivered a thousand shares of stock to each one of the locators—stock of the Pacific Oil Lands Company, which was organized some time in August, 1911. The first assets of this company were the agreements with the Associated Oil Company, which were assigned to it by the locators. Yes, these agreements involved not only the lands in controversy in section 32, but lands in sections 24, 26, 20 and the other lands affected by those contracts of August 4, 1910. The Pacific Oil Lands Company paid its stock for the assignment of these contracts. The entire capital stock was issued to me. After the assignment of this contract of August 4, 1910, which was in September, 1911, the payments under the contract were made to the Pa-

(Testimony of L. B. McMurtry.)

cific Oil Lands Company. I don't know that there was any particular rule worked out as to why one thousand shares of stock were given to each of the locators. I thought that that was what they were entitled to. Yes, I determined the question as I did the amount of \$250 which was paid to each of them in 1910 and 1911. I believed that that was what the locators were entitled to at that time and I gave that \$250 for [685—579] all of their title and interest in and to that property under location. Subsequent to my getting this receipt or release in full from the locators, it was necessary for me to use those locators' names again in order to make the transfer—the agreement to the Pacific Oil Lands Company, and then to get a further release I gave them this thousand shares of stock and got a final release which was secured when I delivered this stock to them in New York in 1911.

Q. You referred to a release which you said you got at the time you delivered this thousand shares of stock to those various oil land locators. I invite your attention now to a release dated September 11, 1911, which reads as follows: "Received of L. B. McMurtry one thousand shares of Pacific Oil Lands Company"—dollars crossed out—"in full of all claims and demands growing out of power of attorney given by me to him of date December 21, 1907. (Signed) Frank B. Chapman."

Now, that is a photographic reproduction, as I understand it, of the original? A. Yes, sir.

I secured a similar release from each of the

(Testimony of L. B. McMurtry.)

locators except Meinecke and Darling. No, after I delivered to each of these locators this thousand shares of stock in 1911, I did not give any of them anything else on account of the fact that they executed this power of attorney or that their names appeared upon these various locations. Yes, I continued to be a stockholder in the Pacific Oil Lands Company and the Associated Oil Company continued to make payments under these contracts or contract of August 4, 1910. The payment of the \$250 and the thousand shares of stock of the Pacific Oil Lands Company covered the entire lands affected by the contracts with the Associated Oil Company, and was all the locators were given [686—580] on account of any other locations upon which their names appeared as locators. I advised the locators whom I saw when the stock was given them to keep this stock under all circumstances and not let it go out of their possession.

Q. There has been offered in evidence four locations covering section 27, township 32, range 23, another quarter of 27, another quarter in 27, and all four quarters in section 27, township 31, range 23; and the name L. M. Cox appears as a witness to the posting of those locations. Do you know anything about them? A. No, sir.

No, I don't remember having conveyed those locations to any person, nor do I know anything about the posting of these notices on July 16, 1909.

Q. I now invite your attention to four locations made on the four quarters of section 20, township

(Testimony of L. B. McMurtry.)

31, range 24 east, upon which the names of these New York locators appear as the locators, and the witness is E. W. Kay upon the location notice; and I also invite your attention to a deed made on the 17th day of March, 1910, by which these thirty-two people acting by L. B. McMurtry as their attorney-in-fact conveyed these four locations to J. M. McLeod. Do you know anything about that transaction?

A. I do not remember the transaction.

I had a transaction with Mr. McLeod in regard to some of this property, but I don't remember the section or township or [687—581] range or in fact the conditions connected with it.

Q. I now invite your attention to exhibit 27, which consists of thirty-two or thirty-three location notices, upon which the names of the New York locators appear, the location notice purporting to have been posted on the ground on January 1, 1909 and also in the same exhibit to a deed dated April 9, 1909, between the locators, through you as their attorney in fact, conveying these thirty-two or thirty-three locations to J. M. McLeod. Do you remember anything about that transaction? A. No, I do not.

No, there was no consideration passed from Mr. McLeod to me, not at that time.

Q. Can you, after glancing over either one of the exhibits 25 or 27, which I have shown you, tell me whether or not you now remember how it came about that these locations were made and the con-

(Testimony of L. B. McMurtry.)

veyance of them made by you to McLeod? A. Yes, sir. A. Will you please tell the Court? A. When this land was located in the Buena Vista Hills, we did not know that it was oil land. I fully realized at that time that it was necessary, if I was ever going to get a hold of a piece of oil territory to get it during the first of 1909. The powers of attorney were used—J. M. McLeod and one or two other parties—for the purpose of locating tracts of land in different places, with the hopes that some place somewhere we would get a tract of land that would produce oil. The agreements, I think, in all cases subsequent to the locations were that they were to develop the property, and the locators were to have a quarter of the entire property. Q. And did that agreement cover all of these thirty-two or thirty-three? A. Yes, sir. A. And that was to be the locators' portion out of that? A. Yes, sir. Q. And [688—582] who was to convey that to them? Was McLeod to convey it to them, or how was it to be done? A. That was to be conveyed by Mr. McLeod, yes, when the property was proven to be oil land, but not until that time. Q. And did you have that arrangement with McLeod prior to January 1, 1909, at the time these location notices were posted? A. No, sir. The agreement was made sometime subsequent to the locations.

Mr. ACH.—Mr. Hall, the date of that location you told me was January 1, 1909?

Mr. HALL.—The thirty-two or thirty-three.

(Testimony of L. B. McMurtry.)

Mr. ACH.—And the deed which was executed in April?

Mr. HALL.—Yes, April 9, 1909.

No, I don't think I had any conversation with McLeod prior to January 1, 1909, about making those thirty-two or thirty-three locations—have no recollection of it.

Q. And there is a group here which were apparently located; it is Exhibit No. 26, Mr. Ach—which were conveyed to David Kinsey.

Mr. ACH.—Now, wait a minute. That date of that location is January 1, 1909.

Mr. HALL.—That is, of the McLeod location.

Mr. ACH.—No, this last—this Kinsey location.

Mr. HALL.—1st day of January, 1909, is one of them. I don't answer for all of them.

Mr. HAMEL.—They are all that date.

Mr. ACH.—That is, the thirteen, is it?

Mr. HALL.—Yes, that is the thirteen. And they were conveyed to Kinsey on the 5th of February, 1909.

Q. What was the arrangement with Mr. Kinsey in regard to that group of locations? A. Just the same as the agreement with Mr. McLeod—the same conditions. [689—583]

Of this group of thirty-three locations involved in the McLeod agreements one-quarter interest was to be returned to the locators. I had no agreement with McLeod as to what I personally was to get out of it. Yes, I eventually entered into some contracts with McLeod respecting sections 20, 22, 24,

(Testimony of L. B. McMurtry.)

26 and 34 on May 17, 1909. Yes, at this time, between January 2 and January 6, 1909, when I entered into this agreement with McLeod with regard to section 32, which was torn up; I also entered into a contract with McLeod with respect to sections 20, 22, 26 and 34. It may have been possible that we did not enter into a signed agreement on that date. If we didn't, however, we agreed on what Mr. McLeod was to have in those sections for the purpose of going ahead and putting a derrick on each quarter-section and putting a well down on each section. It is rather difficult to remember so far back, but I do not recall any negotiation concerning these lands other than section 32 prior to this agreement about January 2 to January 6, 1909. Yes, I think prior to making this location on section 32 under the New York powers of attorney I advised McLeod of the defect in the so-called Chicago locations. "Either he or Mr. Atwood spoke of it, I don't remember; one of us. No, I did not advise McLeod of the manner in which I intended to cure those defects. I think I first advised McLeod of the relocation of these lands under the New York powers of attorney about January 3. Yes, I think there was some discussion as to what would be done with the contract of October, 1908. I am not positive about that. We went to Judge Claffin's office and I remember that we discussed the matter of making out a new agreement under the New York locators. No, McLeod did not pay me any money for making out the new

(Testimony of L. B. McMurtry.)

contract. I think Judge [690—584] Claflin told me that the locations made in 1907 had lapsed on the 31st of December, 1908, and that the property had been relocated, or these New York locations, and that we would make out a new agreement with him under the New York locations. When I went to Judge Claflin's office, I told him what I had done—I had relocated this property, and McLeod came in shortly and the Judge told him then for the first time that section 32 had been relocated, and to use a mild expression; Mr. McLeod was a little peeved at the method we had taken in relocating that property and he wanted to know what position he was going to be put in. "How am I going to protect myself? How am I going to protect the people who have invested their money in here?" And the Judge told him to make out a new contract or new agreement under the new locations; that we could not continue on the locations of 1907 because we could not positively—could not make a transfer. And there was no method that I knew of that could remedy the defect.

Q. The time you relocated the land with the New York locators on January 1, 1909, did you intend to abrogate the contract of October, 1908, and thereby deprive Mr. McLeod and his associates from the rights which had accrued to them under the contract of October, 1908? A. I intended to permit the locations made in 1907 to lapse on the 31st day of December, 1908; to relocate the 1st of January, 1909, with these so-called New York locators and make a new contract with J. M. McLeod. [691—585]

(Testimony of L. B. McMurtry.)

Cross-examination.

By Mr. ACH.—In answer to counsel's request for dates and amounts of payments * * * I have this statement and will read it into the record. (Reads statement as follows:)

CASH PAYMENTS ACCOUNT PURCHASE OF
McMURTRY LANDS.

1910.

Aug. 5.	L. B. McMurtry.....	5,000.00
Sept. 22.	L. B. McMurtry	60,000.00
20.	L. B. McMurtry	25,000.00
Aug. 10.	Douglas Watson Commis- sion.....	2,500.00

1911.

June 22.	L. B. McMurtry.....	82,500.00
Dec. 13.	L. B. McMurtry.....	2,500.00

1912.

Feb. 8.	L. B. McMurtry & Pac. Oil Lands Co.....	7,746.00
8.	Associated Supply Co. % Garrett & Watson.....	1,106.57
27.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
27.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Mar. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00

Apr. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
May 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
June 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
July 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Aug. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Sept. 2.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
2.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Oct. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Nov. 1.	L. B. McMurtry & Pac. Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00

Dec. 2.	Pacific Oil Lands Co.....	8,750.00
2.	Associated Supply Co. % Garrett & Watson.....	1,250.00

1913.

Jan. 2.	Pacific Oil Lands Co.....	8,750.00
2.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Feb. 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Mar. 1.	Pacific Oil Lands Co.....	8,750.00
Mar. 1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Apr. 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
May 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
June 2.	Pacific Oil Lands Co.....	8,750.00
2.	Associated Supply Co. % Garrett & Watson.....	1,250.00
July 1.	Pacific Oil Lands Co.....	8,750.00
1.	Associated Supply Co. % Garrett & Watson.....	1,250.00
Aug. 4.	Associated Supply Co. % Garrett & Watson.....	20,937.33

[692—586]

Aug. 4.	Pacific Oil Lands Co.....	20,000.00
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Aug. 4.	Pacific Oil Lands Co.....	54,680.00
4.	Associated Oil Co. % Pac. Oil Lands Co.....	20,320.00
4.	Garrett & Watson.....	56,700.00
Sept. 2.	Pacific Oil Lands Co.....	20,000.00
Oct. 1.	Pacific Oil Lands Co.....	20,000.00
Nov. 1.	Pacific Oil Lands Co.....	20,000.00
Dec. 1.	Pacific Oil Lands Co.....	20,000.00
1914.		

Jan. 2.	Pacific Oil Lands Co.....	20,000.00
Feb. 2.	Pacific Oil Lands Co.....	20,000.00
Mar. 2.	Pacific Oil Lands Co.....	20,000.00
Apr. 1.	Pacific Oil Lands Co.....	20,000.00
May 1.	Pacific Oil Lands Co.....	20,000.00
June 1.	Pacific Oil Lands Co.....	20,000.00
July 1.	Pacific Oil Lands Co.....	20,000.00
Aug. 1.	Pacific Oil Lands Co.....	20,000.00
Sept. 1.	Pacific Oil Lands Co.....	20,000.00
Oct. 1.	Pacific Oil Lands Co.....	20,000.00
Nov. 1.	Pacific Oil Lands Co.....	20,000.00
Dec. 1.	Pacific Oil Lands Co.....	20,000.00
1915.		

Jan. 2.	Pacific Oil Lands Co.....	20,000.00
Feb. 1.	Pacific Oil Lands Co.....	20,000.00
Mar. 1.	Pacific Oil Lands Co.....	20,000.00
Apr. 1.	Pacific Oil Lands Co.....	20,000.00
May 1.	Pacific Oil Lands Co.....	20,000.00
June 1.	Pacific Oil Lands Co.....	20,000.00
July 1.	Pacific Oil Lands Co.....	20,000.00

(Testimony of L. B. McMurtry.)

Aug. 1.	Pacific Oil Lands Co.....	20,000.00
Sept. 1.	Pacific Oil Lands Co.....	20,000.00
Oct. 1.	Pacific Oil Lands Co.....	20,000.00
Nov. 1.	Pacific Oil Lands Co.....	20,000.00
Dec. 1.	Pacific Oil Lands Co.....	20,000.00
1916.		

Jan. 2.	Pacific Oil Lands Co.....	20,000.00
Feb. 1.	Pacific Oil Lands Co.....	20,000.00
15.	Pacific Oil Lands Co.....	812,353.18

\$1,951,343.08

Mr. ACH.—Yes, these are payments made by the Associated Oil Company to McMurtry, Garrett & Watson, and the Pacific Oil Lands Company by reason of and in fulfillment of the contract of August 4, 1910, and its supplemental and amendatory contracts.

WITNESS.—Yes, Plaintiff's Exhibit No. 45 was delivered to me on or about the date of its acknowledgment, November 22, 1912, and [693—587] was intended as an absolute conveyance to me by the Columbus Midway Oil Company of the particular 40 acres of land described, and the possession of such land was then surrendered to me, and no one has been in possession thereof since then except myself. I never attempted to construct any oil well on this property. There was then a little cabin on it which is still there. I believe also a derrick and equipment had been moved there before I took possession, and I have taken no equipment off the

(Testimony of L. B. McMurtry.)

property. Yes, there was an abandoned hole on the property. A well had been drilled to 2,800 or 3,000 feet and abandoned and the casing pulled—all that could be pulled—and the water shut off and the derrick taken down, and all buildings, casing and machinery of all kinds moved from the property. Since then I have taken no steps of any kind to build anything on that 40 acres or threatened or asserted that I would drill any oil well on it or strike any oil therefrom. Yes, under these so-called Chicago powers of attorney I located some land in San Benito County in 1904. The individual I spoke to about obtaining these powers of attorney was Mr. Shadburn. No, he was not a locator on San Benito land. Yes, I had relatives living in California or on the Pacific Coast in 1903 and 1904, probably 14 or 15. I was friendly with them all. I talked with Mr. Shadburne in Chicago. Yes, he was a citizen of the United States. No, I did not state to Mr. Shadburne or insinuate to him that I desired him to obtain powers of attorney from individuals whom I could subsequently control in any way, or tell him that I wanted 32 people to act as locators for my benefit or men who would transfer to me any interest which they acquired in any property that I might locate in their names. No, no lands were located in the name of John B. Thickens in California. Yes, I was friendly with him in 1907-9, and think he was a citizen of [694—588] the United States. Was also acquainted and friendly with his wife. Yes, I had many acquaintances in

(Testimony of L. B. McMurtry.)

California during 1903—1909. At the time of obtaining these powers of attorney in 1907, when I said that I would not have time after I got back to California to do what I wanted to do and asked these four gentlemen to go out and secure these powers of attorney, what I meant was that I had to be on the ground, and *and* use the powers of attorney on the 1st of January, 1908. That necessitated my getting to California—leaving San Francisco about the 27th or 28th of December. Yes, I then had in mind locating certain lands situated in San Benito County and meant that after I got out to California I would not have time to go out and see different people and get them to locate the lands. “It was my intention to leave New York in sufficient time to get what locators were required in California; but I had to wait some little time in New York in order to get funds to get back to California, I was having some bonds sold. And up to the 17th of December—on the 17th of December, I realized that my time was getting very short, and it was then I asked those gentlemen—those four gentlemen—to get those thirty-two locators. The object in getting thirty-two locators was that along sometime in 1902 or 1903 the Receiver—I think it was—at the Visalia Land Office, in discussing locations of property, made a statement that you never could—” (Objection.)

I understood from the local land officers that I could not make two contiguous locations with the names of the same locators, and it required thirty-

(Testimony of L. B. McMurtry.)

two people to locate a section of ground. That was the object in getting the thirty-two locators. When I asked Thorn, Searls, Powell and Thickers to get these powers of attorney I said nothing about what they were to get. I asked them simply to get thirty-two locators to locate San Benito property. [695—589] Didn't say anything about the character of the men desired. I remember at one time making the remark that I didn't want any saloon-keepers, but I certainly wouldn't have made that remark to those four gentlemen, because none of them were frequenters of saloons. Didn't ask them to get individuals whom they could influence or control in the event that locators were made in their names and made no suggestions as to any particular person or persons. Yes, I was familiar with the workings in California, prior to December, 1907, of land supposed to contain oil which were located by individuals, so far as developing the land was concerned, or obtaining the means of developing, in the Sunset, Midway, and Coalinga oil districts. Yes, it was a general thing for men who located lands, after the location to look about and find someone of capital and means who, for an interest in the land would put up funds for the purpose of developing the property, contract to put down wells for certain interests in the property. The lands which I located under these New York and Chicago powers of attorney were arid, desert lands, at that time unproved as to oil character and remote from habitation and water. Yes, I knew in 1903 and from that time onward that it was a cus-

(Testimony of L. B. McMurtry.)

tomary thing in the State of California for the same set of people to locate in possible or probable oil fields or mining districts, large areas of land. Yes, that was generally indulged in in California. No, I did not, prior to August, 1910, at the time of securing the ratifications and the date of some of the powers of attorney with the endorsements on the back, ever make a request of either one of the New York locators, directly or indirectly, or either of the persons who had delivered the powers of attorney to me, to execute any kind of an agreement or declaration that the located property belonged, in whole or in part, to me, or that I had any interest therein. Nor [696—590] did either of these Chicago or New York locators at any time promise me, directly or indirectly, that any nominee of mine would be given any interest in the property located in their names. Yes, I testified on direct examination that the Oregon Midway abandoned in 1905 the N. $\frac{1}{2}$ of section 32, the northeast quarters of 8 and 9, three quarters of section 10, and a part of section 4, which had been located in 1899. There had been some holes dug along in 1900 or 1901 and assessment work done and proofs filed. When I say it was abandoned in 1905, I mean the locations expired by limitation, because they ceased to do any assessment work, and that was then regarded as an abandonment. That was a general custom in the field at that time to look upon property as abandoned where what was called assessment work had not been done, even though there had been no discovery upon the property. Yes, it was the

(Testimony of L. B. McMurtry.)

practice in the field at that time to go out and dig a trench, it didn't make any difference what kind of a trench it was, four or five feet, or three or four or five feet long, and four feet deep, and four or five feet wide, and spent one hundred dollars on it, that constituted, in the custom of the district, one hundred dollars worth of work, and this right would be recognized by the neighbors. No, sir, January, and all through 1907, there was practically no development work going on in the section known as Buena Vista Hills, Midway, and North Midway districts. Yes, I knew at the time I located in the Chicago people's names and at the time I located in the New York people's names that in order to get a patent from the Government a discovery of oil on the land was necessary. I knew what equipment was necessary to drill a well and the expense. I knew it was necessary to have a discovery on each location. I expected to get outside capital to develop the property by giving them a portion of it, one-half of it, or three-fourths of it, as [697—591] the case might be—whatever was necessary to get the property developed. I didn't have the means. I knew that I couldn't get any money from the locators; they had been represented to me as men who were working for small salaries, and it devolved upon me to get this property developed. In 1907 and 1908, a well to the depth of 2,000 to 3,000 feet in the Midway District would cost anywhere from \$60,000 to \$120,000. I think the minimum would have been \$45,000. The Midway oil district was not then known as a proven

(Testimony of L. B. McMurtry.)

field. I think the first well on the northwest quarter of 32, involved in this case, was drilled in in May, 1909, and it was a pioneer well in that part of the field. No, none of these Chicago locators, prior to the end of the year 1908, advanced or offered to advance to me the cost of the locations or assessment work on any part of the property that was located in their names; nor did I have any funds in my possession from them, or either of them, for that purpose. These Chicago location notices were posted in 1907 by Major Hoepfner, E. D. Burge and myself, under the original powers of attorney, which we then had. Yes, I discovered, in November, 1908, I think, that there was an error, not only in the names of some of the locators, but also in the description of the property. Yes, at the time I made this discovery of errors I had already made an arrangement with McLeod concerning the development of section 32. I discovered that the stakes that we made our locations by were approximately one-fourth of a mile out of line. Took this matter up with Judge Claffin, of Bakersfield, and was advised that the misdescribed locations or locations in which there were errors in the names were bad. The locations on the north half of 32 in 1907 were in reality on the south half of that section. I discovered this subsequent to my arrangement with Mrs. McLeod in 1908. No, I did not mention this to McLeod or to anyone claiming under him. I certainly did [698—592] not; they would have located the property themselves on the 1st of January. There was no reason why they should not, had

(Testimony of L. B. McMurtry.)

the land been open to location. I don't believe McLeod would have done that, but I believe any of his associates would. Yes, it was regarded as rather unprofessional to do this.

"Q. At the time that you ascertained the discrepancies in the names, comparing the locations with the powers, did you then at once notify McLeod or those with whom he was operating upon that property, or did you keep it to yourself for a while? A. I think the matter was discussed when we first—Mr. Atwood told us about the discrepancies in the power of attorney." That was in November, 1908. My recollection of my conversation with Judge Claffin when I told him the conditions is that I asked him first if there was any remedy, and he said that he didn't know of any. He asked me when my locations would expire and I told him on the 31st day of December, 1908, and he said, "You had better arrange to relocate your property on the 1st of January, 1909." I don't remember that we took up the matter in regard to the location notices not being on this particular ground; but this alluded to all of the locations that I had. The notices of January 1 were prepared in the Midway camp by Mr. F. E. Harrison, Major Hoeppner and myself. I posted the notice on the northwest quarter of section 32 on January 1, 1909, a few minutes after midnight of December 31st. I was alone. Everyone was busy posting them on other lands. By others I mean Kay, Harrison and Hoeppner. No, I had not advised McLeod or anybody in the employ of the California Midway Oil

(Testimony of L. B. McMurtry.)

Company, or anybody in the employ of Mrs. McLeod, or any of the other parties who became interested in the development of that quarter-section of land that I was going to relocate. Yes, somewhere between January 2 and January 6, 1909, I made a new contract with [699—593] McLeod concerning the development of this quarter-section under the New York locations. I drove with McLeod from the Midway field to Bakersfield on the 2d of January and the next morning at nine o'clock I was in Judge Claflin's office in Bakersfield and told Claflin what I had done—that is, that I had relocated this property and had the locations with me, and in a short time McLeod came in and Judge Claflin told him that I had relocated the property and Mr. McLeod said some things that would not look well on the records, and wanted to know what protection he was going to have, that they had spent their money, and he had borrowed it, and had people associated with him. The Judge told him that we would give him a contract under the New York locators that would protect him, and he demanded it immediately. I remember that distinctly, because he was still, as I said, peeved, and he demanded an agreement right away, and it was made out during the time that I was at Bakersfield. Yes, that was the first time McLeod knew the property had been relocated. Don't think he knew anything about it until I told him about it at that time. No, I didn't talk to him about it on the way from Midway to Bakersfield in the machine. Preferred to wait until we got to Bakersfield. Am

(Testimony of L. B. McMurtry.)

not sure whether McLeod had begun to drill on this property before January 1st. Practically all the work that was done upon that quarter-section was done subsequently except the erection of the derrick. The California Midway well No. 1 on this property was completed I think in January, 1910. From the date I made my arrangements with McLeod they continued incessantly and diligently to drill upon the property up to the time of the completion of that well in January, 1910. I know this by their records, and being there a great deal of the time in 1909. We had a man in our cabin there 500 or 600 feet from where they were drilling, and he made two reports a week to us, and we knew [700—594] that they were at work all the time. They were to develop this land for the entire quarter-section, and we were interested in knowing that they were at work. The contract made in the early part of 1909 with McLeod was the same as the one made May 17, 1909 (Plaintiff's Exhibit 33), save and except that there was a little difference in taking care of the patent. Yes, in 1908 there was a dispute between myself representing the locators and the Wible-Haberkern crowd, which was settled by my releasing the south half of 32 and their releasing the north half of 32. This in turn necessitated an adjustment of my arrangements with McLeod whereby his operations were limited to the south sixty acres of the northwest quarter of section 32. This was all determined prior to January, 1909. This compromise was concluded in the early part of November, 1908, and was after my

(Testimony of L. B. McMurtry.)

making the contract with McLeod and before I made the new locations. I made a subsequent contract with McLeod on November 11, 1908.

“The COURT.—So that under the New York powers of attorney the only portion of this section that was located was the north half? Mr. ACH.—Yes. The COURT.—He did not locate the south half? Mr. ACH.—I am just going to ask him that question. Q. (By Mr. ACH.) Now, when you first located the land for the New York locators did you locate the southwest quarter or the southeast quarter of that section, in January, 1909? A. There is a hard thing for me to answer. I don't remember. It seems to me that I located the entire section.”

I am not positive. I remember very distinctly of placing the locations on the northeast and the northwest quarters, but I am not satisfied, however. (Location notices dated January 1, 1909, covering the southeast and southwest quarters of said section in evidence, being Plaintiff's Exhibit 14 and 15.) No, from the [701—595] time I had this interview with McLeod in Claflin's office in January, 1909, I did not assert or claim that any of the work that was done upon that property prior to January, 1909, was done for the benefit of the Chicago locators; nor had I any intention after that date, nor did Mr. McLeod ever express any intention to hold or attempt to claim under the Chicago locations. We considered that the Chicago locations were absolutely void and expired on the 31st of December, 1908. When I was endeavoring to have this land

(Testimony of L. B. McMurtry.)

developed McLeod came along at the psychological moment and offered to take the property and develop it—that is, put up a derrick on each quarter, drill a well on every section,—first put one well down to see if it was oil land, and if it proved to be oil territory then to put a well down on each quarter-section where he already had a derrick erected. McLeod began work on the northeast quarter I think in October, 1908, and prior to January 1, 1909, had erected a derrick at a cost of about \$1,000, and put a building there. But the location notices left me in a position where I could not make any transfer. I didn't know that there were such men in existence as I had on that power of attorney—or on the certified copy of the power of attorney. Yes, the written contract with McLeod provided for the putting up of a derrick on the very center of the section in order to prove up on all four quarters, on the theory that a well in the very center would demonstrate oil in each of the four quarters, and after this contract of October, 1908, with McLeod, an attempt was made to build a derrick in the middle of the section. Then the settlement with the Wible-Haberkern people was made between October 26 and November 1, and a new arrangement was made with McLeod, and this derrick which had been put in the center of the section was moved in order to get onto the northeast quarter. Yes, it is a fact that while I had contracted [702—596] with McLeod concerning the north half of 32 on the basis of the Chicago locations, locations in these names were never actually

(Testimony of L. B. McMurtry.)

legally made on the north half of the section. No, I never promised the men who I got to secure these Chicago powers of attorney or the New York powers of attorney any money or reward for so doing. When I went to New York in August, 1910, my arrangements with the Associated Oil Company were that the ratifications of these New York powers of attorney must be obtained. My attorney in these negotiations with the Associated Oil Company was Walter S. Brann. I knew that Henry Ach represented the Associated Oil Company, but I had no conversation with Mr. Ach prior to May, 1917, except that I met him once in his office during the negotiations, at which time he asked me if the locators were *bona fide* men and if they were all alive and real men, and my response was that they were all *bona fide*, real live locators. Yes, at the time these negotiations with the Associated were taken up there had been for some months a producing well on the northwest quarter of 32—this California Midway Oil Company well. In making these Chicago locations I relied upon old stakes on the ground, but before making the New York locations I actually had the land surveyed. I found afterward that none of the Chicago locations were actually made on the northwest quarter of 32, or on any portion of section 34. The location notices on the north half of 34, when the new survey was made and we discovered the charcoal corners, so we were positive we were right, were all on section 29, and the location notices that I placed on the south half of 32 were on the north

(Testimony of L. B. McMurtry.)

half of the section. No, in attempting to locate the northwest quarter of 32 for the Chicago locators, I did not get a location notice on the northwest quarter of 32, and the same applies to section 34. (Attention called to Defendants' Exhibit "F.") Yes, I read and [703—597] discussed that letter with Mr. Watson and my attorney, Mr. Brann. (Attention called to Defendants' Exhibit "H.") Yes, I saw that letter before it was sent, and authorized its being sent. Yes, subsequently to those communications the plan of action was changed, I think by the Associated Oil Company. It is my understanding that that plan was not approved, but a different suggestion came from their attorney, Mr. Ach. Yes, this contract dated August 4, 1910 (Defendants' Exhibit "K"), was signed and acknowledged by me personally and as attorney in fact prior to its delivery. Yes, there was a direct understanding with Mr. McLeod, Mrs. McLeod and the Thirty-two Oil Company, through McLeod, prior to May 17, 1909, that the work which was being done by himself, or his assignors—California Midway Oil Company—upon all of the northwest quarter of section 32 should inure to the benefit of the mining location claim made by the New York locators. Yes, that understanding was prior to the discovery of oil and prior to the May 17th contract. Yes, by reason of these misdirections I regarded all of the Chicago locations invalid at the time I made the locations in the names of the New York locators on January 1, 1909. I did not know that these locations were

(Testimony of L. B. McMurtry.)

wrong until we made the surveys. Then I didn't take anyone into my confidence, because if I did this property would have been located by other people, and I kept it to myself absolutely. The only people that knew that those locations were not properly made or were imperfect were the surveyors. No, up to the time I made this assignment of December 30, 1909 (Plaintiff's Exhibit 31), I think there were no other contracts outstanding made for or on behalf of these New York locators, other than those named in that instrument. No, I think that Kay, Harrison and Searls had not then been paid for their services. Yes, I was then indebted for my operations in the Midway field and had no security from the New York locators for the [704—598] repayment of any such indebtedness. My recollection of this assignment is just a bit hazy, but I believe that my conveyance to Claflin and his practically immediate reconveyance to me individually (Plaintiff's Exhibits 30 and 31) were for the purpose of convenience in handling these different agreements, and not having to sign the names of all of the locators, in event of any transfer or anything of that kind. That is the only recollection I have of that. No, I never had in my possession nor was there executed any contract by me with these New York locators, or any of them, to the effect that they would not at any time revoke the powers of attorney I had received from them. Yes, at the time I made this contract of August 4, 1910, with the Associated Oil Company concerning section 32 I had

(Testimony of L. B. McMurtry.)

transferred to McLeod, in May, 1909, the whole of the northwest quarter of section 32, accompanied with the agreement which showed that he was to apply for patent and hold the north 100 acres for the benefit of the locators. Yes, the situation shown by these various contracts was the condition of the title to the northwest quarter of section 32 at the time I entered into this contract with the Associated Oil Company in August, 1910. No, during the negotiations leading up to this contract I did not claim that I was the sole party in interest, or that the New York locators did not have any right, title or interest, or claim, to that land or the benefits to be derived therefrom. I don't remember of ever making any statement to anyone during these negotiations that I had any interest in the lands. Those representing the Associated Oil Company in this negotiation required a ratification from each of the New York locators of the power of attorney, and I went east to secure the same, returning about October, 1910. While away I drew about \$9,000 of the money which had been deposited by the Associated Oil Company. Don't know whether any of this money was drawn down [705—599] while I was away, but think Major Heoppner had authority to do so. I either sent back or brought with me 31 of these ratifications—all except that of Daniel W. Darling, who I learned was deceased. Made efforts to secure a ratification from his estate or representatives thereof. Believe I had a ratification signed by Mrs. Daniel Darling, Elizabeth Darling, whom I

(Testimony of L. B. McMurtry.)

found at Worcester, Mass. Took the matter up with her attorney, who secured her signature to a ratification, and later, after the estate was administered on in Kern County, California, I got a deed for her interest. The transaction was not closed until the estate had been administered upon and the Darling interest deeded to me. It was then found that Darling had left a will providing for \$1,000 to certain relatives, and the Associated Oil Company further demanded that I obtain a release from these legatees or furnish full and complete guaranty against any claim by them. My attorney, Mr. Brann, looked after this administration in Kern County for me, such proceedings being instituted at my request for the purpose of obtaining a distribution to me under the deed of Mrs. Darling, of the residuary legatee, of whatever interest Mr. Darling had in those lands: yes, that is true. To all of those locators, whom I personally saw in securing these ratifications, I am reasonably sure I gave \$250 at that time. No, I didn't tell them that I was giving them this money as compensation for signing the ratification, or as compensation for permitting me to use their names in making the locations. All those I saw read the ratification before signing. Don't know that any promise was made by others who secured some of these ratifications of future payment of \$250. So far as I know, no such promise was made, and I didn't authorize such a promise. I selected no particular individuals to see myself, just saw those whom it was convenient to see. There were a cer-

(Testimony of L. B. McMurtry.)

tain number of these fellows that [706—600] were around close by that I could reach. Others were out of town and it took some time to get those. Yes, those who received the \$250 check at the time of signing the ratification endorsed their names under the typewritten matter on the back of the check releasing their interest. Some who signed ratifications in 1910 did not receive a check or any money—probably 14 or 15. No, I didn't tell any of those to whom I gave \$250 not to tell the other locators who signed the ratifications that they had transferred their interests or that they had received money. Yes, some of these locators who did not receive the money at the time of signing the ratifications didn't receive any money until fully a year later. Yes, it is a fact that one of these locators, Hamlin E. Hatch, in 1914 or 1915, commenced a suit in California against me for an accounting in this matter which was compromised by my attorney by the payment of a little more than \$520, but I don't know how much. (Mr. Brann says it was \$1250.) Yes, I had forgotten this during the direct examination. No, I never told Sue Greenleaf at any time that she could buy the interest of Frank Searls in locations which were made and which I quitclaimed to her, at any time for \$250. Have known here since about 1902. (Attention called to Plaintiff's Exhibit 17 to 24.) I didn't have anything to do with those location notices. Miss Greenleaf, in making these locations and using our locators' names, was doing the same thing and under the

(Testimony of L. B. McMurtry.)

same arrangements that were made with Mr. McLeod on locations that he made over in the Elk Hills and other places. Miss Greenleaf represented that she had \$60,000 on hand ready to develop that property, and after the property was developed—that is, if it proved to be oil property—25 per cent of the property was to be deeded to the New York locators. If she developed an oil territory, she was to deed a one-fourth interest back—if it proved valuable [707—601] property we were to get a fourth interest—that is, the locators were. No, there was no written agreement to that effect. No, Miss Greenleaf had nothing to do with the locations which were made on January 1, 1909, involved in these transactions, including section 32. All agreements were made subsequently to the location. We did not make any agreement in regard to the amount of land that they were to have or the interest they were to have until after the locations were made—I think about the time I gave her the deed. Yes, at the time I made these locations in 1909, and the attempted locations in 1907, they were in the habit of locating very large tracts of land. I know in one case between McKittrick and Sunset of one concern locating 190 some odd quarter-sections, and there were many other cases throughout the field. It was customary to locate large tracts of land. You were taking a desperate chance anyhow. We didn't know that it was oil territory. And there was a possibility that by locating a large tract of land you might get a piece of land that was oil-bearing. No, in

(Testimony of L. B. McMurtry.)

making these locations, including the northwest quarter of 32, I had no intention of defrauding the Government or of obtaining personally a greater amount of land than I could directly under the law. No, prior to the making of these locations by McLeod in the names of the New York locators (Plaintiff's Exhibit 25), there were no arrangements with McLeod as to what he would do upon those locations of what he would get for developing them. After they were made it was understood that McLeod was to develop the territory, and that if it proved oil-bearing the locators were to get 25 per cent, and McLeod the other 75 per cent. No, I did not have the money then to do the developing. Yes, in making this arrangement I thought I was benefiting the locators whose names were used. [708—602]

Stipulated, that on or about January 2, 1908, locations were made in San Benito County, California, in the names of the signers of the powers of attorney, 278 tracts embracing 5,560 acres (Plaintiff's Exhibit 4); 268 tracts embracing 5,360 acres (Plaintiff's Exhibit 5); 259 tracts embracing 5,180 acres (Plaintiff's Exhibit 6); and 281 tracts embracing 5,620 acres (Plaintiff's Exhibit 7); and that approximately the same area was, in 1904, 1905 and 1906, located in the names of the so-called Chicago locators (Plaintiff's Exhibits 8 and 9).

No, I spent no money on these locations made in 1904, 1905, 1906 and 1907, and filed no proofs of assessment work—never at any time filed proof of

(Testimony of L. B. McMurtry.)

labor on these Chicago locations in San Benito County. (Referring to Defendants' Exhibit "W.") Think that agreement and the proceedings recited in the resolution was made before I went east in 1911, and that the conveyance was afterward made. Yes, before I went east all the capital stock of the Pacific Oil Lands Company except three shares to the incorporator had been issued in my name. All of the rights retained by me in the contracts with McLeod and the Associated Oil Company, covering 1,440 acres of land embraced in the co-called New York locations (Plaintiff's Exhibit 32), together with 640 acres of patented land in San Benito County, were vested in the Pacific Oil Lands Company, and were the only lands conveyed to this company. Yes, prior to September 1, 1911, I had executed in the names of the New York locators a conveyance of the entire interest acquired under locations in their names in 1909 covering section 28 (Defendants' Exhibit "X").

"The COURT.—It won't do, Mr. Ach, to presume that I have any recollection of those details. Mr. ACH.—No, but your Honor will remember that when I state that it does appear in the record somewhere [709—603] that he felt that he was under obligation to Stratton— The COURT.—I remember that. Mr. ACH.—That he charged him with locating the land when he shouldn't have done it; that Stratton considered that he lost the land when he didn't do the assessment work, and that he was owing him for board and lodging for all these peo-

(Testimony of L. B. McMurtry.)

ple, and that he conveyed the interest which he acquired for all these locations in consideration of having boarded him and taken care of him while he was attempting to hold it for the New York and Chicago locators, isn't that true? Mr. HALL.—Yes, sir, quite true. We will take that as an admission. The COURT.—I recall very distinctly that it was evidence in some case that at one time McMurtry had, acting as attorney in fact for some locators, conveyed some property to Stratton in settlement of a board bill or some bill that Mr. Stratton claimed he had against McMurtry. Mr. HALL.—Yes, and which had been contracted while he was holding these lands for the Chicago locators. Mr. ACH.—That doesn't make any difference in this case. I am now at this point: I am trying now to show that which counsel would not admit, that before this transfer to the corporation, that McMurtry, acting for these people, whether he gave it away or gave it for value, or not, had disposed of these various locations which counsel said was outstanding at the time of the transfer to the Pacific Oil Lands Company, because, right or wrong, it is my understanding that when this transfer was made to the Pacific Oil Lands Company, that it conveyed all of the remaining interest—live interest of the New York locators to that corporation, both by contract to the Associated Oil Company and by contract with McLeod plus the 640 acres of San Benito County land. The COURT.—That is the inquiry I was making a moment ago. Mr. ACH.—

(Testimony of L. B. McMurtry.)

I understood it, and therefore I was trying to get counsel to admit it. I think we can prove it; I don't know. Mr. HALL.—I still [710—604] don't admit it, because I don't know. Mr. ACH.—All right." Yes, the deeds (Defendants' Exhibit "X") were intended as absolute deeds to section 28, and on September 1, 1911, when I conveyed other lands and interests in lands to the Pacific Oil Lands Company (Plaintiff's Exhibit 32), there were no interests in sections 4 or 7 or any other live locations upon which work had been done, remaining in these New York locators, in lands located in their names. I don't recall whether deeds to section 4 had then actually been issued but the land was under contract for sale with J. M. McLeod, calling for absolute deeds. Some time in 1909 there was a transfer of the northeast quarter of 7 by me, as attorney in fact, to C. L. Clafin, and by Clafin back to me. The object was to make applications for patent. Afterward I deeded it to E. A. Hoeppner, believing that it should be in the name of some outsider or some other person to make application for patent. It stands in that position to-day. I had no written agreement with Hoeppner. Yes, the land was developed. I located it, I think, May 9th, and had a discovery or a well that would produce over 20 barrels a day on the 17th of September, 1909. Yes, that was located in the names of the New York locators. No, it is not being operated. The oil was too light to use as fuel, we lifted the casing and the well caved in. I didn't want to go

(Testimony of L. B. McMurtry.)

ahead and sell the oil or attempt to, because I knew the Government would probably ask for a receiver, and I better let it alone. All that would be necessary would be to erect a derrick and clean it out, and it probably would be all right. No, this land was not conveyed to the Pacific Oil Lands Company. Yes, at the time of the transfer of certain lands to the Pacific Oil Lands Company (Plaintiff's Exhibit 32) there was on this 160 acres of section 7 a completed well producing 20 barrels or more of oil a day. Cannot recall when I conveyed this land to Hoeppner. It was prior to [711—605] August 4, 1910. Yes, application for patent has been made, and is still pending. Yes, section 9 was located in the names of these New York locators. I sold that early in 1909, to the Chanslor-Canfield Midway Oil Company, for \$10,000. Don't recall that the Columbus Midway Oil Company gave me a mortgage back for part of the purchase price when I made this conveyance (Plaintiff's Exhibit 44). The consideration was \$3,000 an acre, or \$120,000. I am satisfied that something over \$10,000 or less than \$25,000 cash was paid me, and no doubt some arrangement was made as to the balance, but I don't recall what the arrangement was. When the property was reconveyed to me (Plaintiff's Exhibit 45) any outstanding obligation was cancelled. I didn't include this 40 acres in the deed to the Pacific Oil Lands Company (Plaintiff's Exhibit 32) because I didn't expect to turn it over to that company until such time as it was a proven and pro-

(Testimony of L. B. McMurtry.)

ducing property, and as it never was, it was never transferred to them. No, I would not want to say it was not productive, because it may not be right. You might put a well down on one portion of the 40 acres and get oil, and put it down somewhere else and not get oil. I don't know whether on January 1, 1910, assessment work had been done on these Greenleaf lands (Plaintiff's Exhibits 17-24); nor did I ever do any assessment work on those lands McLeod was to get 75 per cent for developing (Plaintiff's Exhibit 25). I never saw any of those properties, and never had any report that McLeod did any assessment work there; nor did I know of any assessment work being done by anyone under or for the New York locators on either the McLeod, Greenleaf or Kinsey locations (Plaintiff's Exhibits 17-26). No, so far as I know, no work, assessment or development work, has been done upon those lands. I considered all of those locations dead at the time of this transfer to the Pacific Oil Lands Company (Plaintiff's Exhibit [712-606] 32). No, at the time I requested Searls, Thorn, Powell and Thickens to secure signers to the powers of attorney I didn't promise any of them a greater interest than they would acquire as a locator. The remark that I made to them, in my room, was to this effect: I asked them first if they could get these powers of attorney. They said they could. I told them that I wanted them for a specific purpose and if the land proved to be oil land that we would make some money out of it. That is all that was

(Testimony of L. B. McMurtry.)

ever said to them. Did not explain to them what I meant by the plural "we." That was all I said. The only difference between the terms of this contract made with McLeod between the 2d and 6th of January, which was destroyed, and the one made in May, 1909 (Plaintiff's Exhibit 33), was that under the January contract McLeod was to secure the patent, and under the May contract we would jointly have to pay for the patent. Yes, before making this January contract I told McLeod not to worry about it, to go on under the same terms and he would get a contract for and on behalf of the New York locators which would provide substantially the same thing. That was stated in Clafflin's office in Bakersfield. No, I am not the owner of any shares of stock in the Associated Oil Company, Union Oil Company, Standard Oil Company, California Midway Oil Company, Western Crude Oil Company, or the Thirty-Two Oil Company; nor have I ever owned any subsequent to August, 1910. No, I claim no interest of any character to the south 60 acres of the northwest quarter, or the north 100 acres of section 32; nor have I any interest of any character in any of the properties which were located by the New York locators now held, owned or claimed by the Standard, the Union, the United (successors of the Sunset Monarch), the California Midway, or Associated Oil Companies, nor have I any mortgage or lien of any kind from either of them against the northwest quarter of section 32.

[713—607]

(Testimony of L. B. McMurtry.)

“Q. I think I have asked you on this subject, but I find by the record a question asked you by Mr. Hall which reads as follows—at page 11: ‘While you were in New York at that time’—referring to the time that you asked the people to ratify—‘did you pay any of these people any money on account of their having executed the ratifications?’ ‘A. No, sir.’ Then a long objection by me, and the Court said: ‘If he paid \$250 he probably would know what he paid it for.’ ‘Mr. HALL.—That is what I say.’ ‘The COURT.—Answer the question.’ And then your answer is, ‘Yes, sir.’ Did you intend by that answer to convey to the Court the idea that you paid those men to whom you did pay \$250 in August, 1910, for the purpose of ratifying your transactions or those contracts? A. No, sir, I did not. If I made that statement it was a misunderstanding, because I did not pay them anything for signing those ratifications.”

Redirect Examination.

“Q. Why did you pay these New York locators this sum of \$250? A. For all their right, title and interest in and to all locations made under those powers of attorney issued in December, 1907.” Yes, this plan as outlined in this letter of July 7, 1910 (Defendants’ Exhibit “F”), was changed and the plan outlined in the contracts of August 4, 1910, substituted, providing for a declaration and ratification by the New York locators. Yes, this ratification by the New York locators was the only instrument or instruments executed by the locators under

(Testimony of L. B. McMurtry.)

the terms of that contract. No, there was no other instrument executed by me with reference to a declaration or ratification under the contract of August 4, 1910. No, I never saw this mortgage for \$20,000 which was given by Hoeppner to the Associated Oil Company, and know nothing of it of my own knowledge. [714—608] It is possible that I derived some money because of it. There may have been some money turned over during the time I was in New York. I don't remember the conditions or circumstances connected with it, and don't know what the security was. Daniel W. Darling died some time prior to my going to New York in August, 1910, though I didn't then know it. Yes, I went to New York subsequent to August 4, 1910. Fred B. Hughes was administrator of the estate of Darling in Kern County, California. Yes, I purchased the assets of Darling's estate that were there probated, for which I gave about \$250 or \$300. The estate there administered upon consisted of the locations made in his name in the Midway field. In addition to what I paid for this administrator's estate I paid Mrs. Darling \$250, just the same as we paid the other locators. Yes, we issued stock in the Pacific Oil Lands Company to Mrs. Darling. No, the arrangements I had with McLeod and Sue Greenleaf with regard to these locations (Plaintiff's Exhibits 17-25) were not in writing. The only writing between Miss Greenleaf or McLeod and myself in this regard were those deeds. No, at the time I made this conveyance to the Pacific Oil Lands Com-

(Testimony of L. B. McMurtry.)

pany (Plaintiff's Exhibit 32) I didn't know that assessment and development work had not been done on those lands. I never heard anything about those locations since the date of their location. E. W. Kay was superintendent of the Stratton Water Company. Yes, he was in a measure associated with me in business during all of those years. I don't know that he was one of the appraisers of the Darling estate in Kern County. Don't know who the appraisers were. E. A. Hooppner was applicant for patent on the northeast quarter of section 7. Q. What consideration did Mr. Claffin pay to you for the conveyance to him of the northeast of 7? A. I think there was a nominal sum of \$10 that is usually used in those agreements. Q. And from Hooppner to you what was the consideration? A. I think [715—609] the considerations were the usual considerations that are used in those agreements, Mr. Hall. I don't remember, however. But I suppose they were. Q. Do you now personally claim an interest in that northeast of 7? A. Yes, sir. Q. What interest do you claim? A. I claim an interest in it under those locations made on the 9th day of May, 1909. Q. Well, what interest do you personally claim in it—what proportion of it? * * * A. I claim the entire quarter-section. No, I did not pay any of this \$10,000 received from the Chanslor-Canfield company for the northeast of 9 to the locators. I conveyed section 4 to J. M. McLeod, for which I received \$40,000. No, I gave no part of this to the locators. Yes, I am now claiming

(Testimony of L. B. McMurtry.)

title to the northwest quarter of the northwest quarter of section 32, 31-23, part of the land in suit, under the so-called New York locations. Yes, it may be oil land. I have not a copy of the contract made with the Columbus Midway Oil Company for this 40-acre tract and don't know where it is. They paid me along in small payments, \$600, \$1,000 and various sums like that, totaling probably more than \$10,000. No, none of this was paid to the New York locators. The deferred payments under this contract with the Columbus Midway Oil Company were to be made to me as attorney in fact for the locators. Yes, in the case of Taylor v. McMurtry, in the Superior Court of California at San Francisco, wherein Taylor was seeking an accounting against me in connection with these New York locations, I testified that no promise was ever given Taylor to give him any interest in the locations; that there never was any intention of doing so; that Taylor never had any interest in these locations; that my recollection was that in securing these powers of attorney it was for the specific purpose of locating lands in San Benito Field, and that if the property proved to be oil land to repay—well, there were two or three of those [716—610] men who had secured powers of attorney that had advanced money for the Empire Oil Company—to repay them their money. It hadn't entered my head—let me make a further explanation—my understanding up to 1916, at the time this case was before the United States Court, that a dummy was

(Testimony of L. B. McMurtry.)

a man who did not exist, or in taking some man's name without his knowledge and using it, but it appears that the Special United States Attorney General passed a different construction on it, and claimed a man is a dummy who really hasn't an interest in the property. In discussing the matter with Mr. Ach he only asked me this one question—"Are you locators all alive?" I am simply trying to give you my understanding of a dummy. I desire to make an explanation to the Court. In this case of *Taylor v. McMurtry* before Judge Nourse of San Francisco, I am frank to admit that I lost my temper, and I believe that under the circumstances most any other man would. It will be necessary for me to go back just a little. In the trial of the case before your Honor in November, 1916, as I have stated once before, Oscar Lawler, for the defendants, apparently utilized all of his time and his power to build up a case for the locators. There never could be any question in anyone's mind even at that time. I was between—almost—the devil and the deep sea—the Government on one side trying to make my locators dummies, and Mr. Lawler on the other side building up a case for the locators to do me. It kept me—and, furthermore, I had not had any preparation in the case. These things went back from five to—yes, to thirteen years, if you will remember, which of course you do; that I had my dates mixed; I was a year off on many things, and no doubt I was "rattled," to use a common expression, and when this case came up of

(Testimony of L. B. McMurtry.)

Taylor vs. McMurtry and Mr. McCormick came into the case, as testimony has been given in one of the cases, Oscar Lawler recommended Mr. McCormick [717—611] to take this case against me. During this examination by Mr. McCormick and Mr. Mackenzie I absolutely lost control of myself. It is to be presumed when a man gets along to my age he is able to control his temper, but this happened to be one of the cases where there is so much at stake that I did lose my temper, and I made statements there that positively are untrue. In the first place, I never had any conversation with Mr. Wheeler regarding the ragged edge of the truth or the ragged edge of perjury at any time. How I happened to make the statement I haven't the least idea. When I made this statement in regard to Mr. Taylor not,—think it was probably a mistake on my part, or the reporter's—I didn't intend to say that Mr. Taylor had no interest. He didn't have any interest in the land, that was all. Now in regard to a dummy locator— Q. (By Mr. ACH.) What do you mean, Mr. McMurtry? Excuse my interruption. Do you mean that he didn't have an interest in the land at the time you were testifying or never had an interest? What do you mean there? A. I mean he had no interest in the land at the time I was testifying, which he did not. Mr. ACH.—Pardon the interruption.

A. (Continuing.) Regarding a dummy locator, I can assure you, your Honor, that there never was a time, neither was there ever an occasion for me

(Testimony of L. B. McMurtry.)

to use a dummy locator. It was something that had never occurred to me to use a dummy locator at any time, anywhere, or under any conditions. I never thought of such a thing. I never heard of such a thing until it was brought up about the time that we were getting—or preparing to get these ratifications. I had read some of these timber cases where men had been employed to go out and money had been paid to them to go and make certain locations, and I appreciated that that was a dummy locator. But where a man had not received any money for the use of his name, if he was a *bona* [718—612] *fide* citizen of the United States, I never realized that he was a dummy locator. That is a construction placed upon it by Mr. Hall and others in Washington connected with the Government. One of the officials of the Government criticised me for not giving the locators—“If you had given him more money, if you had paid the locators more, why, it would have looked different.” Now, to my mind whether you paid the locator after the locations were made \$10 or \$10,000, really, I couldn’t see any difference.

I began negotiating with Mr. Atwood, who was representing the Chanslor-Canfield Midway Oil Company for the transfer of the northeast quarter of 9, in the latter part of 1908. Yes, I was in the field during the fall of 1908 and spring of 1909. Yes, I am familiar with the location of the California Midway Oil Company’s well No. 1 on the southwest corner of the northwest quarter of 32. Yes,

(Testimony of L. B. McMurtry.)

a portion of the material for a derrick was on the ground prior to January 1, 1909, on the northwest of 32. Yes, I know Dave Kinsey. He was superintendent of the California Midway Oil Company. The new location notice that I posted on the northwest of 32 was put on a stake 150 feet due northwest from the center of the section. Yes, this California Midway well No. 1 was on the southwest corner of the northwest quarter of the section. The old Chicago location notice was about 100 feet southwest of the northeast corner of the northwest quarter—that is where I thought I placed it but later found the lines were wrong and that this first notice was not on section 32 but on section 29 to the north. After I discovered the error in my first locations I just held possession without giving anyone any notice that there was any irregularity about it. This land which I actually held possession of was according to the new surveys the northwest of 32, and I afterwards covered it by this New York location made January 1, 1909. The California Midway were [719—613] in possession of the property under the terms of the agreement with the Chicago locators. After the California Midway took possession of the property, or after the agreements were made, while I visited the property, still at the same time I did not claim any possession of it. It was under their supervision, and it was their duty to look out for it and see that the land was not jumped and that it was properly developed and all that sort of thing. Yes, I suppose I claimed actual

(Testimony of L. B. McMurtry.)

possession under the California Midway under the Chicago locations up to January 1, 1909, and then under the New York locations. Q. Did you notice or were you in position to observe whether or not there were any changes in the actual physical work that was going on upon the northwest quarter of section 32 before and after January 1, 1909? A. Mr. Hall, in answering that question I will state that from the middle of November until the first day or the second day of January, I was one of the busiest men in the Midway field. There were jumpers out there—and it was a regular thing to eject a jumper every day, and sometimes two or three, and during that part of the time I don't know that I had a thorough knowledge of just what was going on on the northwest quarter of 32. It was from early morning until late at night. I couldn't state. Yes, I was on section 32 on January 1, 1909. No, I did not interfere with the work that was going on upon this California Midway tract of land after January 1, 1909.

Recross-examination.

When I went east in 1910 to secure these ratifications I left a power of attorney with A. E. Hoeppner, in San Francisco. Being shown the mortgage dated September 19, 1910, from the locators, by Hoeppner (Defendants' Exhibit "Y"), I have no recollection of ever having heard of it before. I have seen the contract signed by Hoeppner, as attorney in fact, but not the mortgage. I remember [720—614] there was some kind of a transaction under

(Testimony of L. B. McMurtry.)

which Hoeppner raised some money while I was in New York. No, prior to January 1, 1909, I had not told McLeod or anybody connected with the California Midway Company as to the defects in these locations. If I answered otherwise on direct examination it was certainly a misunderstanding, because I never did. Yes, I am positive that I had a written contract with McLeod concerning this land between the 2d and 6th of January, 1909, and if I said at any time that I had only a verbal contract with him at that time I was mistaken. This fact is shown in a diary kept by Major Hoeppner. Yes, this modification of the original drilling contract with McLeod was made about November 1, 1908, which modification was substantially the same as the contracts of January, 1909, and May, 1909. I think the only difference between the contract of January, 1909, and May, 1909, was something in regard to the patent. The contract of November 1, 1908, and that of January, 1909, were very similar, only the first was with the Chicago locators and the latter with the New York locators. Yes, all of the payments made by the Associated Oil Company on these lands were turned over to the Pacific Oil Lands Company, and I received no greater proportion than my stock holdings entitled me to.

Q. Did you not, at page 106, immediately following the quotation of Mr. Hall in answer to Mr. Mackenzie's question, say: "During the course of your activities under this power of attorney, did you consider yourself the agent of Mr. Taylor? A. I have

(Testimony of L. B. McMurtry.)

so testified. Q. You mean that you did consider yourself his agent? A. I have so testified, yes. Q. I am going to repeat that question Mr. McMurtry; I am not sure whether you have answered it or not. Now, is it a fact that you considered yourself as agent? A. I say that I so testified, but I was representing him. Q. It is a fact, is it the truth? A. In a measure, yes. Q. What do you mean by [721—615] that? A. He was a locator. Q. Were you his agent? A. I suppose under the law, yes.” Did you so testify? A. Yes. Mr. HALL.—Read the next question following that, Mr. Ach; it will shorten the examination. Mr. ACH.—I will do it for you: “Q. Did you consider yourself under the law his agent? A. I never considered that he had any interest in any way, shape or manner when I secured these powers of attorney. It was an afterthought all together.” Did you so testify? A. Yes, sir. Q. Well, did he have any interest in these located lands before you located them? A. No, sir. Q. The question of whether he had an interest in the lands came after the lands were located; is that a fact? A. Yes, sir.

Yes, the division of the land in the north half of 32 was the same under the contract with McLeod of January, 1909, as it was under the amended contract of November 1, 1908. Yes, I have a distinct recollection of making this contract with McLeod early in January, 1909, as to the New York locations. Yes, at the time I testified in A-38, involving the northeast quarter of 32, I had been advised that Mr. Law-

(Testimony of L. B. McMurtry.)

ler, representing the defendants in the case, and who cross-examined me, had been engaged in fomenting or attempting to cause litigation to be instituted against me by the New York locators for an accounting in this matter. That was in 1916. Yes, the Pacific Oil Lands Company had then been organized and the entire consideration had been received by me or that company from the Associated Oil Company. Yes, the 32,000 shares of stock of the Pacific Oil Lands Company had then been issued to the New York locators, 472,750 to A. E. Hoepfner, 50,000 to Harrison, and I held 50,000 shares. No, I did not then have any contract or agreement with Harrison or Hoepfner to share the expense of the litigation or judgment that might be entered against me in these accounting suits for the New York locators. No, there were no funds in the treasury [722—616] of the Pacific Oil Lands Company. Yes, all the money received from the Associated on these contracts was distributed by the Pacific Oil Lands Company as dividends as received. The last payment of \$800,000, in February, 1916, was partly in notes payable to the Pacific Oil Lands Company, which were discounted at once and the proceeds put into the treasury for distribution at once. I received only what my stock holdings entitled me to. Yes, there were twelve or fourteen suits brought by these locators against me, as I testified in the Taylor case, which was one of them. No, I never wrote any of these people or told anybody else to acquaint either one of them that I had located the land and that they did not and

(Testimony of L. B. McMurtry.)

were not to have any interest in them. Yes, at the time of the transfer to Claflin in 1909 (Plaintiff's Exhibit 30) a gas well had been brought in by the Standard Oil Company on section 26, and it had begun to look as though some of these lands were oil lands.

Q. Did you up to that time have any understanding or agreement of any kind with either of these locators that you were to receive any portion of that land or any amount of that land or any definite sum or proportion of the amount realized from those lands for services which you performed in locating the lands, or in causing the contracts to be made or the development to be made? A. No, sir. Q. Did

you at that time have any security from them or either of them that they would, in the event of ascertaining the value of these lands, permit you, as their agent, to go on and manage and control the matter?

A. No, sir. Q. I will ask you again, did those facts and that condition have anything to do with the transfer by you, as the attorney of those locators, to Claflin, and back from Claflin to you? In other words, I want to know whether that had anything to do with this. A. Mr. Ach, it appears—or, rather, my recollection is that making that transfer was a suggestion of Judge Claflin regarding [723—617] the handling of the—or the convenience of handling those locations, and not signing all of those names; and, again, there were thirty-two small locators, some of these people were traveling men, there was the possibility of a death or something of that kind, and

(Testimony of L. B. McMurtry.)

it was really as a matter of protection. No, there was no agreement or understanding between Hoeppner, Harrison, Kay, Searls and myself at the time the agreement was made with the Associated as to how the proceeds from the contracts were to be divided. That had been talked about.

Redirect Examination.

We did not survey section 9. No, the relocation of it under the New York powers of attorney was not based upon the fact that there was a missurvey or mislocation of the lines of that section.

Q. I call your attention now to page 106 of the Taylor-McMurtry record, where I find the following, just following what Mr. Ach read. Did you consider afterwards that he had an interest which you were representing as his agent? A. Yes, after the United States withdrew the land. Q. What was there in that that made you change your attitude of mind towards Mr. Taylor? A. Because it was necessary then that those men should be *bona fide* locators, and have an interest, in order to meet the contest with the Government, that we would have to— Q. Is it the truth that they were *bona fide* locators at the time you made the location; as you understood it, was Mr. Taylor a *bona fide* locator? A. That depends on what is considered a *bona fide* locator. Q. What did you consider it at the time? A. I considered that he was, because he was a live man. Q. Did you consider that in making the locations you were acting as his agent, in his interest? A. I had never thought of it at all as a matter of agency. Q.

(Testimony of L. B. McMurtry.)

Is it a fact that the reason you gave him a check for \$250 and testified that that was more than he was entitled to, was due to the [724—618] fact, as you say, the truth is, that he was a dummy? A. Yes, sir.” Did you so testify? A. I did so testify,—which I have explained to the Court, I believe.

Recross-examination.

No, I did not consider Taylor a dummy when I gave him the check for \$250, and didn’t tell him I did. Yes, I told him when I met him August 24, 1910, the entire transaction—all the arrangements with the Associated Oil Company regarding our contract, how it was, the price that was to be paid and how it was to be paid, provided, however, there was oil discovered. Q. And this testimony that Mr. Hall just read in the record was at the same time—practically the same day as the other testimony that you have admitted making at the time these suits were pending? A. Yes, sir.

Redirect Examination.

No, Taylor expressed no dissatisfaction with the manner in which the affairs had been handled when I made this explanation to him.

Mr. ACH.—Mr. Hall, the amount of oil that the Associated Oil Company from one well on the 60 acres has extracted from that property I will prove in this case. The amount of oil which the California Midway Oil Company has taken from that quarter-section, and is now taking, I will prove in this case. It goes without saying, when the testimony is all in,

(Testimony of L. B. McMurtry.)

there has been no oil from the northwest 40 acres in the northwest corner of that property. The gravity of that oil, I presume, for the purposes of this trial, does not cut any figure, but the gravity of that oil you can have at any time.

Mr. HALL.—Now, with that understanding, that that question is open in the event that your Honor should ultimately decide that the Government has a right to recover upon those matters, the Government [725—619] desires to rest its case in chief.

Mr. BRANN.—Mr. Hall, do I understand that you intend to offer proof, as far as the defendant McMurtry is concerned, on that 40 acres, that oil was taken off or that there has been wastage by letting water into the well, or things of that kind?

Mr. HALL.—Oh, no, not as to that; I haven't any testimony at this time.

Mr. ACH.—Do I understand that the case was closed as to McMurtry? And it goes without possible contradiction that there has been no oil taken from there. There is no well and no intent to drill any well upon the land. That is simply evidence at this time. Now, you say you have no more evidence on that subject, did I understand you?

Mr. BRANN.—If that is so, your Honor, I think I am now in position to renew my motion which I made at the opening of the trial, in the admission of Mr. Hall, that as far as McMurtry is concerned, we are entitled to a jury trial here.

The COURT.—Jury trial for what?

Mr. BRANN.—On the issue as to whether or not

the locators, as far as McMurtry, and the *bona fides* of these locators.

The COURT.—Well, hasn't the evidence disclosed that this is a piece of wild land, and no one is in possession if it?

Mr. BRANN.—There is no evidence here to show that McMurtry is not in possession of it. He has presented a deed here. That carries with it the possession.

The COURT.—But the legal title of that is in the Government, and no one, it seems, is actually occupying the property, so there might be a very serious question as to whether the Government could bring an action in ejectment in cases of that kind, or not.

Mr. ACH.—It is a very serious question as to whether the Government [726—620] can bring any action of any kind in regard to it.

The COURT.—Yes, I think that is probably true.

Mr. ACH.—I know if I was counsel for the Government I would dismiss him.

Mr. BRANN.—Then we will ask your Honor, in order that we may have the record clear, that you will deny our motion at this time for a jury trial, and we will take our exception.

The COURT.—Yes, sir, *pro forma*.

Mr. BRANN.—As far as Mr. McMurtry is concerned.

The COURT.—Yes, sir.

Mr. BRANN.—Now, then, your Honor, I make the motion that we be dismissed from the action.

The COURT.—That will be the same ruling.

Mr. BRANN.—Exception.

Mr. PEASE.—And the situation, if the Court please, with regard to Mr. McLeod is very apparent at this time. He has parted with whatever interest he had in the land. He is not committing any waste, never has, never has extracted anything from the ground, and I confess that in my young years I do not understand why he is in this case, especially any longer, after the testimony that has gone in.

The COURT.—I don't know what the Government claims.

Mr. HALL.—The answer admits that he claims an interest in this land, and I think I shall argue to your Honor, when the final argument comes up, that Mr. McLeod is burdened with the duty as to carrying out this question of securing title under those contracts and those locations.

Mr. ACH.—But that does not concern the Government in any way. If he is under obligation to somebody else, that is none of the Government's business.

The COURT.—Well, I will reserve the entire question and hear [727—621] it at the final argument.

Mr. ACH.—Now, do I understand that counsel has rested the case?

Mr. HALL.—With the exception of any proof, as stated.

Mr. PEASE.—Then may it be deemed that I made the formal motion, and that motion has been dismissed as to Mr. McLeod?

The COURT.—Yes.

(Testimony of C. L. Claflin.)

Mr. PEASE.—And we take an exception.

The COURT.—Yes, you may have your exception.
[728—622]

Testimony of C. L. Claflin, for Defendants.

C. L. CLAFLIN, called by defendants, March 6, 1919, testified in open court as follows:

Have practiced law at Bakersfield for the past 18 years, and was Judge of the Superior Court of Modoc County, California, for six years. As to these deeds (Plaintiff's Exhibit 30, 31) I think I suggested to Mr. McMurtry that a plan of that kind should be followed for convenience in handling these lands and to avoid the difficulties which might result from the death or incapacity of any of the locators. That was the idea that I had. And Mr. McMurtry agreed with me, in fact, took my advice in reference to it. No, there was no statement or declaration made by McMurtry to the effect that his object and purpose in making these transfers was to deprive the locators of their interests in those lands or contracts relating thereto, or that the locators did not have, or that he intended they should not have any interests in those contracts or those lands. The title was handled that way for convenience, but always for the benefit of the locators. Yes, I was present at this interview between McMurtry and J. M. McLeod in my office in January, 1909, as testified by McMurtry. I recollect that some time after the first of January—I don't recall the exact date, but it must have been soon after the

(Testimony of C. L. Claflin.)

first of January—Mr. McMurtry and Mr. McLeod came to my office. Mr. McLeod—it was then—the first time—as I now recall that was the first time—it must have been the first time when I had any knowledge of the new locations. McLeod talked to McMurtry in my presence and asked him what was going to become of him, and the matter was discussed at length and McLeod seemed to feel that McMurtry probably was trying to take some advantage of him—and seemed to be just a little bit angry about the matter, and finally it was agreed that a new contract should be entered into between the New York locators and McLeod, or Mrs. McLeod, as the case may [729—623] have been, as a substitute for the previous agreement made by the Chicago locators. That, in substance, is my recollection of the interview, and the understanding entered into there was carried out by the execution of another agreement. During the time I have practiced at Bakersfield I have done considerable work relative to unpatented oil lands and am well acquainted in Kern County, of which Bakersfield is the county seat. Never heard of any organization of miners which established rules. Have been personally interested in oil locations in Kern County.

The general custom and practice was that a location notice would be posted on the land. If it were surveyed land, nothing further would be done upon the land usually, although in the earlier days, in 1900 and 1901, and even later perhaps, they marked the boundaries, even on surveyed land, by stakes, and

(Testimony of C. L. Claflin.)

after the location notice was posted a duplicate or copy would be recorded in the office of the County Recorder of the County. For instance, if that location should be made on the first day of January, 1901, then in the year 1902 \$100 worth of work of some character would be done on the land by the locators. That would be followed along perhaps for a number of years and eventually a well would be drilled and oil discovered and a patent issued on application. That was the general plan, and frequently such locators made contracts for the development of such lands. The locators would enter into an agreement with someone who had capital for the drilling of a well, with an agreement that when patent was issued the locators should have a portion of the land and the party drilling the well should have a portion. Considerable of the development of oil land in Kern County was accomplished in that way. Limitation as to the number of claims the locators might make was not regarded as necessary or considered in any way so far as I know. It was always regarded as [730—624] proper and legitimate for a set of locators to locate a large area. Have heard the question discussed but never heard it claimed that it could not be done or that it was not proper to do so. And the rights of the locators who made locations, recorded the proof of labor and maintained it in that way for two or three years, were always regarded as being of value, and sales of such rights were very frequently made. Have frequently acted as attorney and advisor for purchasers

(Testimony of C. L. Claflin.)

of such rights before discovery and have sold a number of such interests of my own.

Cross-examination.

During the period between the execution of these contracts of October 8, 1908, and May 17, 1909, I guess I represented McLeod. I so understood it. Of course it was a sort of mutual affair—as between McLeod, and McMurtry, but my employment in those matters was by McLeod. Yes, in November and December, 1908, I represented McLeod, Wheat, and Wilson, and Gordon in these transactions affecting Section 32. Don't know just when I discovered the defects in the so-called Chicago powers of attorney, but think it was when McMurtry was in my office about January 1, 1909. Yes, I wrote that letter of November 12, 1908 (Plaintiff's Exhibit 65), and suppose I received that one from Wilson & Wheat of November 14, 1908. (Plaintiff's Exhibit 66). Don't recall anything about the defects in those powers of attorney, and don't how I learned of it unless it be that McMurtry called my attention to something in relation to the matter. I have a faint recollection that he did, in view of that letter. [731—625]

Testimony of Douglas S. Watson, for Defendants.

DOUGLAS S. WATSON, called by defendants, testified March 5, 1909, in open court as follows:

(Defendants' Exhibit "A-1" shown witness.) Yes, that is the original deed, dated March 22, 1911, from the locators to the Columbus Midway Oil Com-

(Testimony of Douglas S. Watson.)

pany, embracing 40 acres in the northwest corner of the land in suit. The actual work of drilling a well on this 40 acres was begun in March, 1911, at which time the California Midway Oil Company had a producing well on this same mining location embracing the northwest quarter of 32, 31-23. We drilled one hole 1010 feet and lost the pipe, then drilled another hole and completed a well. The total cost to me and my associates was about \$77,000 or \$78,000. Before starting the development of this 40 acres we paid McMurtry \$10,000 as the first payment. Yes, I was instrumental in bringing the Associated Oil Company and L. B. McMurtry together.

In the latter part of April, 1910, Mr. Garrett, my partner, and I returned from Bakersfield. We had drilled an unsuccessful well on section 22 in the east portion of the Kern field, and owned two complete strings of tools. We were looking for a piece of land upon which to operate. Ralph Arnold, the geologist, whom I knew, happened to be in Bakersfield just before we left, and I asked him if he knew of any piece that we could get hold of, and he suggested that we look into the Viacitis District. With that idea in view Garrett went down through San Benito County and over to the Viacitis District to look over the land and see if there was any land there that could be had. As I recall, a man by the name of Ashurst had a great deal of land adjacent to some wells that the Union Oil Company had drilled, but he asked us for so much money for the right to drill upon the land, that Garrett came back

(Testimony of Douglas S. Watson.)

more or less in disgust. On his return trip, which was made in a machine, he stopped in Hollister and asked George McConnell, the then assessor of San [732—626] Benito County, if he knew of any people who owned land in the Viacitis District that Garrett and I could get hold of. McConnell said, "Why, I have a friend who drills land in the Midway field. What is the use of going to Viacitis." He says, "I will give you a letter to him." Which he did. That man was L. B. McMurtry. Some time in the end of April, or the latter part of April, 1910, Mr. McMurtry came to our office, which was then in the Humboldt Bank Building. Garrett had not presented his letter, but George McConnell had written to him stating that we were looking for land. McMurtry produced a map of the North Midway field and said, "Here are the lands that we are interested in, and we would like to talk to you about it." At that time the 200 acres in the north of 32, 31-23, was under option to somebody down here in Los Angeles. I believe it was Wilson, I don't know. Garrett and I had an idea that we might sell that land for McMurtry; and we obtained a five days' option upon that 200 acres lying along the north of section 32. We advertised the land in the papers, both here and in San Francisco. Garrett made several trips to see prospective purchasers, but all of the attempts fell to naught. We then said to McMurtry, "We think we can get you some money out of the land provided you will do this: Cut it up into smaller holdings, and permit us to form a com-

(Testimony of Douglas S. Watson.)

pany upon 40 acres; and when we have successfully done one, on one forty, then we will progress to the next." So that we began in the extreme north and west part of this 200 acre band across the top of the section. And we formed the Columbus Midway Oil Company. Garrett and I took a contract to purchase the land and turn it over to the Columbus Midway. The Columbus Midway, I believe, was incorporated in June of 1910. We sold some stock—put some money in of our own, and found that we had a little difficulty in selling as much stock as we thought we should. I said to Garrett one day, "I will go down [733—627] and see Scribner"—whom I knew quite well—"and if we can make a contract with Mr. Scribner to sell to the Associated Oil Company a contingent and future oil to be produced from this property, why then our troubles should be over." So I approached Scribner with that idea in view, to sell him a contingent 100,000 barrels of oil. At that time we had not begun drilling. Mr. Scribner scoffed at the idea. Oil was very plentiful. The Lake View was then doing its quota, the Lake View Gusher. From that conversation we drifted to the general condition in the West Side. He said that the Associated might be interested—

Q. Let me ask you something; you said, as I understood you, before you go on with your statement, that you acquired your original interest in this 40 acres in March, and then you mentioned the month of April.

A. I think you misunderstood me, Mr. Ach. I

(Testimony of Douglas S. Watson.)

said that we began operations upon the property—actual drilling operations, in March of 1911. It was in April, 1910, when we first met Mr. McMurtry. Mr. Scribner said that the Associated Oil Company might be interested in the lands in the North Midway field. I don't remember whether we got a map out and looked upon it or not, but there was—immediately I said, "Well, if that is the case, I would like to present you something." And I went on back to the office and talked it over with Garrett; called in Mr. McMurtry and asked him if we might present to the Associated Oil Company the lands that ultimately were contracted for on August 4, 1910. Thereupon Mr. McMurtry was agreeable, and I put into writing a tentative proposition; went down and delivered it to Mr. Scribner, talked the matter over, and finally got to a basis where we thought we could do business.

Q. Let me interrupt you, please. Prior to the time of going down to Mr. Scribner, after talking with Mr. McMurtry, did you obtain any [734—628] contract with Mr. McMurtry for compensation or commissions or anything of that kind, in the event that you succeeded in doing anything with Mr. Scribner or the Associated Oil Company?

A. No, sir. Mr. McMurtry specifically stated that we would have to get our compensation out of the Associated Oil Company. Q. Prior to going down with the tentative proposition that you have mentioned, did you discuss that tentative proposition with Mr. McMurtry? Did it emanate from you or

(Testimony of Douglas S. Watson.)

him? A. It emanated—a price upon the lands was set by Mr. McMurtry, but the method of handling—of presenting the matter, fell to us, or rather largely to me. Q. Go on.

A. The first plan, as I recall, was that a corporation would be formed; that these lands would be conveyed to that corporation, and that a series of bonds would be issued upon each of the several parcels of land; that a sinking fund would be established at the rate of so much per barrel for oil produced on the several pieces of land, and that the Associated would bind itself to do the drilling and operate so many strings of tools. The land in 32 was regarded by Mr. Scribner as proven land. The outlying lands—the lands in 20, in 26 and in 34 were not so regarded, so that a larger price per acre was put upon the 160 acres along the northern line of 32, which, as I recall, was \$2,500 an acre, while the outlying lands were figured at \$1,500 an acre. Afterwards, this method of handling the properties was abandoned—

Q. Wait a minute. Let me interrupt you. I refer to Exhibit “E” in evidence in this case, being a letter dated June 22, 1910, to Mr. Scribner, signed Douglas Watson; is that your signature? A. Yes, sir. Q. And you are the gentleman that wrote that letter? A. I believe I am. Q. Now, before sending that letter to Mr. Scribner, did you show it to Mr. McMurtry and obtain his approval of it? A. Yes, sir. Q. I call your attention to this portion of the letter— [735—629] to Othello Scribner: “I sub-

(Testimony of Douglas S. Watson.)

mit the plan herewith modified to meet your suggestions. First: We to form corporation, capital \$2,500,000. Second: Issue \$2,500,000, 6 per cent 20 years bonds. Third: Sell to such company 160 acres proven territory in 32, 31-23 for \$400,000 in bonds. Payable \$100,000 upon transfer of title, \$100,000 upon completion of well within one year, balance \$200,000 upon issuance of patent." Referring to the statement there that the section 32, 31-23, 160 acres, was proven territory, if I understand your testimony, prior to that date, about April or some time before this date, your company had been organized, you had been trying to sell stock, failed, and you went to Mr. Scribner in order to attempt to make a contract for oil. That is a fact, is it? A. Before the date of that letter, yes. It was in June, however. Q. Well, whenever it was, it was before that letter? A. It was before that letter, yes, sir. Q. Now, had you yourself been down upon that property prior to that day? A. Yes, sir. Q. And did you make any representations or statements to Mr. Scribner as to an existing well upon the property in section 32 at that time? A. You mean the northwest quarter? Q. Yes, sir. It speaks of 160 acres here of proven territory. A. I don't know as I made representations. It was my knowledge that the California Midway had a well upon the property by that time.

That letter dated July 1, 1910 (Defendants' Exhibit "F") was received by me from Mr. Scribner. I turned it over to McMurtry. Also received this

(Testimony of Douglas S. Watson.)

letter of July 21, 1910 (Defendants' Exhibit "C").

Q. What, if any, conversation did you have with Mr. McMurtry about the statement as to drilling operations in section 32, and what conversation did you have with him, if any, after the receipt of this letter of July 1, 1910, concerning the declaration of trust which Mr. Scribner there demanded by the persons who held the legal [736—630] title, to the effect that it was held for the locators? A. Regarding the drilling. I believe we discussed the date of the coming in of the California Midway well. Regarding the declaration of trust, Mr. McMurtry told me that I might tell Mr. Scribner that that was acceptable—that he would make a declaration of trust. Q. Did Mr. McMurtry at that time claim to you that any other person than the locators were the owners of that land or entitled to the title to it? A. I don't recall that there was anything said regarding any other ownership or interest in the land outside of the locators and McMurtry. Q. (By Mr. ACH.) Did Mr. McMurtry at that time tell you that he had any interest in that land as against the locators? The COURT.—He may state what was said by McMurtry on that subject. A. I don't believe there was a lot of conversation in that regard, Mr. Ach. I think when this was gone through with, *seriatim*, that Mr. McMurtry waved his hand and said, "Of course, we will do that."

Received this letter of July 7 (Defendants' Exhibit "F") and took it up the next day with Mc-

(Testimony of Douglas S. Watson.)

Murtry. I wrote that letter dated July 9, 1910 (Defendants' Exhibit "H"). Was authorized by McMurtry to do so, the conditions therein being carefully considered. Also wrote this letter of July 26, 1910 (Defendants' Exhibit "I"). Of the original plan proposed, which contemplated the formation of a corporation and the issuance of a series of bonds on each one of the parcels, was deemed to be too cumbersome. Just who suggested the modification, I don't recall, but I am under the impression that it originated in the Associated Oil Company. The new arrangement was finally crystallized into the form in which the transaction finally was carried through on August 4, 1910, a deed to be given by each one of the locators to one of the persons we have always called the Herrin grantees, and a contract in the form that now exists, to be entered into. [737—631]

As soon as we got down to the point of a deal with the Associated Oil Company, Mr. Scribner's first question, I believe, was, "What about these locators?" He wanted to know about these locators. I talked with Mr. McMurtry—had talked with him about that, and assured Mr. Scribner that all of the thirty-two persons were alive and that the power of attorney under which Mr. McMurtry had acted was unrevoked. The 160 acres in the north half of section 32 was deemed by all of us to be proven land; and therefore a portion of the purchase price of

(Testimony of Douglas S. Watson.)

that parcel was to be paid for in money. No money was to pass until the Associated was assured that the various locators were alive, and that money was to be placed in escrow, pending the assurance on the part of ourselves, for Mr. McMurtry that all of these locators were alive. Q. You say in this letter that "the suggestion is made that the confirmation of twenty-five of the thirty-two locators should make it possible for the money to be withdrawn. It will be possible to reach all of the thirty-two locators, but the obtaining of three or four may require four or five months." What do you mean by "confirmation"? What was asked of you by Mr. Scribner or by anybody else in the shape of a confirmation? A. The idea of a declaration of trust had been abandoned with the old and original method of dealing with the lands. When it came to the new plan, the confirmation confirming the acts of McMurtry under the power of attorney was to be obtained and sworn to by each one of the locators. Q. (By Mr. ACH.) Was anything said about the necessity by Mr. Scribner or demand on his part upon the subject of ratifying the contracts which were proposed to be entered into by these locators? A. As I recall, Mr. Ach, not only were the acts of McMurtry included, but the ratification of this form of contract with the Associated. I then knew none of these locators. Learned from McMurtry that Daniel W. Darling was at San

(Testimony of Douglas S. Watson.)

Andreas, Honduras. It was [738—632] McMurtry who suggested that the confirmation of the 25 locators should be sufficient to draw the money down. Believe I delivered this letter (Defendants' Exhibit "E") to Mr. Scribner in person and that immediately we got Mr. Brann and yourself together to draw the contracts. Yes, it is possible that preparation of the contracts may have been started before that. Yes, Mr. Scribner insisted on a ratification by the 32 locators, and this was considered a condition precedent to any deal, and that the papers should be deposited in escrow pending the securing of same. If the entire 32 ratifications were not obtained, the deal was to be off. Yes, these transfers, McMurtry to Claflin and Claflin back to McMurtry, in December, 1909 (Plaintiff's Exhibits 30, 31), of which I first learned when the abstract was secured during negotiations with the Associated, were discussed by representatives of the Associated. I believe McMurtry explained the object was twofold: one, to eliminate the signing of so many names; and the other, to a certain extent to protect himself in the event of death of any of the parties. That is the feeling that I have covering that Claflin transfer. Q. Did Mr. McMurtry, at the time this matter was taken up, or spoken about, between you, say to you that these locators did not have any interest in the land or anything to that effect? A. The question of the locators being alive and being real people, and so on, was a very burn-

(Testimony of Douglas S. Watson.)

ing one—one that Mr. Scribner insisted upon at some length. I had never had any experience with located land but just once before, when I located some land for members of my own family; so that it was quite natural that we did a good deal of talking with Mr. McMurtry at that time as to who these people were and all about them, and the method that he had used in procuring these powers of attorney, and all that. It was the first time that I had ever heard of locating by power of attorney. I thought it was a very cute [739—633] trick, and very new; so there were numbers of times when we talked about the locators, and each time Mr. McMurtry added something to our knowledge. I don't know that I can just say what was said in our conversation, but we were always assured, what carried the assurance to Mr. Scribner, that they were persons that were alive and in fact that the locators were all right.

Q. (By Mr. ACH.) Now, I want to know this: Whether, Mr. Watson, at the time you made your first arrangement with Garrett concerning the obtaining of the option or concerning the occupancy of a portion of the north part of section 32, or whether when you got your deed in 1911 signed by the locators, or when you were carrying on these negotiations between the Associated and Mr. McMurtry, and while the Associated was demanding a declaration of trust for the locators, or a ratification of the power and the acts thereunder, including

(Testimony of Douglas S. Watson.)

the contracts about to be made, Mr. McMurtry at any time stated to you that the locators did not have any interest in that property and that it belonged to him alone; or to himself and Hoepfner; or to himself, Hoepfner and Harrison? I want to know whether he ever made any such claim. A. Mr. McMurtry never, to my knowledge, made the claim that the property belonged absolutely and personally to him. I don't think that I would have risked my money on the 40 acres— Mr. HALL.— Well, I object to that. Q. (By Mr. ACH.) Well, I understand you to say that he never did. A. Never did.

No, these demands of the Associated in the first instance for the declaration of trust by whoever seemed to hold the legal title did not meet with any opposition in June or July, 1910, from McMurtry. Yes, while McMurtry was in the East on this matter I was in San Francisco the greater part of the time and assisted in the negotiations. The circumstances connected with this letter of September 19, 1910 (Defendants' Exhibit "Y"), were as follows: I was advised, [740—634] as these ratifications were made, when Garrett went east with McMurtry, and he wrote me now again, and when we had gotten 24 or 25 of the—I had advised Mr. Scribner, rather, that 24 or 25 of the ratifications had been obtained, why, I was asked to see if I could not get the Associated Oil Company to advance some money; and I went to Mr. Scribner with that idea in view. The

(Testimony of Douglas S. Watson.)

basis of our negotiations was the fact that at that time there had been secured 28 ratifications, and Mr. Scribner thought that he would be perfectly safe in assuming that the other ratifications would be obtained, and advised the company that they could safely advance some money. And I remember getting hold of Mr. Hoeppeuer, representing Mr. McMurtry, and taking him on down and introducing him to Mr. Scribner. Hoeppeuer held a power of attorney executed by McMurtry, authorizing him to act for the New York locators, and executed a mortgage in their names to secure the Associated for the money advanced. Yes, I had a commission contract, and my commission was paid. No, the Associated is not indebted to me or I to it, nor am I a stockholder in that company. Yes, what interest I had in the northwest of 32, so far as the 40 acres is concerned, was merged in the Columbus Midway Oil Company, and by this deed to Mr. McMurtry (Plaintiff's Exhibit 45). I intended to part with all the interest of the Columbus Midway or myself in that 40 acres. Yes, Mr. Garrett was interested with me in that commission. Yes, he went back with McMurtry to advise me as to the result of the effort to secure these ratifications; and I think there was a further reason, and that was to see that those locators were alive and were real persons. No, there was never returned to us this \$10,000 we paid McMurtry or any of the money we expended on that land. We had an arrangement

(Testimony of Douglas S. Watson.)

with him that if we formed a company and successfully financed it Garrett and I were to make a commission, which we did. [741—635] Under our contract with McMurtry we were to get this 40 acres at \$2,500 an acre. We turned it in to the Columbus Midway at \$3,000 an acre and received \$5,000 in cash out of the first payment and notes for \$15,000, which latter were torn up when the land was reconveyed by the company to McMurtry.

Cross-examination.

Yes, this 40 acres was conveyed directly from McMurtry as attorney in fact, to the Columbus Midway, under the contract to purchase that Garrett and I had secured in about May, 1910, at which time the only improvements on the land was a cabin. Yes, we were relying on the New York locations of January 1, 1909, and on the discovery made on the northwest quarter in the California Midway well No. 1. During all this time the land was held by Garrett and myself under our contract and by the Columbus Midway such reliance was entertained by both Garrett and myself and by the Columbus Midway. That company began drilling on this land in March, 1911. The second hole was completed into the oil at 3,000 feet. We sold some oil, but the well did only 60 barrels a day and didn't pay us. We preferred to reconvey to McMurtry rather than pay the unpaid portion of the purchase price. We plugged the well and got rid of all the stuff on the

(Testimony of Douglas S. Watson.)

land just before or just after the reconveyance to McMurtry (Plaintiff's Exhibit 45). As to this deal with the Associated, when we started, as I have testified here, we were told that we would have to look to the Associated Oil Company for our commission. That was carried through and we were given a commission, depending on the production, totalling \$170,000. After the transaction was entirely completed and everything signed up and McMurtry about to go east with Garrett, he took Garrett aside and said, "I am so pleased with the way you have handled this thing that I am going to give you a 10 per cent interest in what may come out of this proposition." [742—636] Now that was to Garrett. When Garrett went east with McMurtry in August he was not representing the Associated. He was representing McMurtry, if anything. He never represented the Associated, nor did I. [743—637]

Testimony of Othello Scribner, for Defendants.

OTHELLO SCRIBNER, called by defendants February 21, 1919, testified in open court as follows:

Reside in San Francisco. Was receiver of the United States Land Office at Visalia, California, about two years, 1899 to 1901, and prior to that had been interested in oil locations in the Coalinga district from 1896. Have been in touch with the oil industry in the State up to 1911; was connected with the Inca and Arica Oil Companies, of Coalinga.

(Testimony of Othello Scribner.)

Was one of the original organizers of the Associated Oil Company in 1901. Was Secretary until 1911, and from about 1903 was Assistant General Manager. Was also a director and kept in touch with its affairs. W. A. Williams, whose name appears at the bottom of these sheets dated April 25, 1910 (Defendants' Exhibit "B"), was in the geological department of this company at that time and made this report at my request. I was naturally following the development in that district, and there was a great deal of excitement there, and the big wells being brought in, and I noticed on the map that this ownership was delineated, and it was a large ownership, and I asked Mr. Williams to examine the status of those lands and make a report to me, which he did, and that is the report. Later Douglas Watson, claiming to be the agent of Mr. McMurtry and representing Mr. McMurtry,—and I think he stated also Mr. Hoepfner,—brought up the proposition of the Associated Oil Company acquiring those lands, and stated that they could be purchased upon, generally speaking, a production basis, which interested me very considerably at that time, with some cash. That occurred in my office—I don't know, in the month of June, 1910. Afterwards, after we had gone into the matter very considerably, Mr. Hoepfner—or Mr. McMurtry, was there, Mr. Garrett was there, and I had conversations with all of them. They stated to me that those locations were made in good faith; that they

(Testimony of Othello Scribner.)`

were made— Before I saw Mr. McMurtry, I [744—638] went into the details with Douglas Watson. Mr. Watson stated to me at the time that the location—well, all of the others—that there was a discovery on the northwest quarter of section 32; that there was a rig up, you understand, on the northeast quarter of section 32; the work had been commenced prior to the withdrawal order of 1909, and that it was prosecuted with diligence; and that all of these locations not connected with this case at all—the Union Oil Company and Standard Oil Company, had contracts with McMurtry and his locators, and they were in possession of each and every one of the other locations and drilling upon them and prosecuting the work from some time prior to the withdrawal order, and had been ever since. And the subject of the good faith of the locators was discussed and both Mr. Watson and Mr. McMurtry represented to me that those locations were made by citizens of the United States; that they were all alive. Mr. McMurtry presented powers of attorney under which he had made these locations, and these powers of attorney were generally examined. And the question of the good faith of the locators finally resulted in our insisting upon a ratification by each and every one of the locators, to be acknowledged before a notary public, ratifying the transaction and the contract that was finally made between the Associated Oil Company and Mr. McMurtry, an attorney in fact, representing these various locators. After considerable

(Testimony of Othello Scribner.)

negotiations the terms were agreed upon (Defendants' Exhibit "F"), and this contract of August 4, 1910 (Defendants' Exhibit "K"), entered into. For our protection we demanded that the transaction we had agreed upon through Douglas Watson and McMurtry should be ratified before a notary public by each of the locators before the deal should be consummated, the papers being put in escrow. The ratification of locator Darling was not obtained; he was dead. This was taken care of as shown in that contract of June 22, 1911 (Defendants' Exhibit [745—639] "L"), signed by McMurtry. When the question of these ratifications came up, McMurtry seemed to be pretty shy of money, and wanted five thousand dollars to pay his expenses in securing the ratifications. We advanced it to him with the understanding that if he did not get the ratifications he would repay the five thousand dollars, and it was to be a lien on any interest he might have. This amount became a part payment on account of the purchase price. During these negotiations or at any time while I was with the Associated Oil Company no statement or representation was received by me as an officer of that company in any way to the effect that either or any of the locators were not *bona fide* locators. Never heard the subject mentioned, and I handled the entire transaction with the aid of the attorneys.

Cross-examination.

Am not now interested in any way in the Associated Oil Company. In advancing this sum

(Testimony of Othello Scribner.)

to McMurtry to get the ratifications we had his promise that it was a loan to him as well as a payment on the contract. The interest that McMurtry had in this land was our security, as set out in paragraph 20 of this contract, reading: "It is further understood and agreed that the Five Thousand (\$5,000) Dollars advanced by the Associated Oil Company to said L. B. McMurtry is to be a lien upon all the interests of said L. B. McMurtry in and to said land." [746—640]

Testimony of Walter S. Brann, for Defendants.

WALTER S. BRANN, called by defendants March 5, 1919, testified in open court as follows:

Am a practising attorney and member of the firm of Jordan, Rowe & Brann, of San Francisco. Have been present during this trial and heard the testimony of Mr. Watson and Mr. McMurtry. During the negotiations mentioned I represented those negotiating with the Associated Oil Company and prepared the papers (Defendants' Exhibits "F-1" to "N-1") provided for in this agreement of August 4, 1910 (Defendants' Exhibit "K"), and various other deeds and documents in connection with the transaction. During this negotiation Mr. Ach, representing the Associated Oil Company, not only insisted on our furnishing conveyances or releases from all shown by the abstract to have any possible interest in the land in question, but the personal ratifications of anything therefore done by McMurtry and the agreement then under consideration by each locator, to which McMurtry

(Testimony of Walter S. Brann.)

offered no objection. There was no discussion of these locators being "dummies." What was wanted was to know if these powers of attorney had been properly given—if these men were alive—if McMurry was acting for them and with their authority, and if the transaction was all through done in the interests of the locators. That was the basis of my discussion with Mr. Ach; and he said that was why he wanted these ratifications. [747—641]

Deposition of George Grant Gillette, for Defendants.

GEORGE GRANT GILLETTE, called by defendants February 8, 1919, testified by deposition as follows:

Reside at Tulsa, Oklahoma, and am an oil producer. Resided at Los Angeles in 1905–1915, and was in the oil business. Was a director in the California Midway Oil Company from its organization in October or November, 1908, for about three months, and then from March, 1909, for about a year, and visited the northwest quarter of 32, 31–23, many times. Was familiar with the leasehold interest this company had in it. We began drilling operations there about December, 1908. During my visits to the property in January and February, 1909, I observed new location notices on this land on the hitching post where we were drilling well No. 1. Yes, I talked with McLeod about it. This was quite uppermost in our minds. We had gone in there on the one location to prove up this land and drill this well and afterwards they posted this new location and we entered into an

(Deposition of George Grant Gillette.)

agreement to go on until they drilled the well under the new location. The first location was made by Mr. McMurtry for Chicago parties and the second by New York parties. After we learned of the new locations we of course immediately talked to McLeod about finding out where we were at, and immediately requested they should have a new agreement from McMurtry under the new locations. We continued right along on this well No. 1 under the new locations, to prove up on the property for the benefit of the entire quarter—the northwest quarter of 32. After I learned of the new locations and before I spoke to McLeod about securing this agreement dated May 19, 1909, he said he had an understanding with McMurtry and would get a new agreement; and our understanding was that the operations conducted on that property after January 1, 1909, were being conducted under that understanding and the agreement that was to be obtained pursuant to it. [748—642]

Cross-examination.

The California Midway took this 100 acres—60 acres in the northwest and 40 acres in the northeast quarter of 32—prior to January 1, 1909, and continued to work right along after that date under these new arrangements with McMurtry. I don't think we had anything different after January 1, 1909, from what we had before, that is, what we claimed while I was with the Company. The posting of these new notices on January 1, 1909, did not interrupt or interfere with our work.

(Deposition of George Grant Gillette.)

Redirect Examination.

I did not know in advance that these new locations were to be made. First learned of this some time about February 1st to March 1st, 1909, saw the locations on the post and McLeod told me about it, [749—643]

Testimony of Frederic V. Gordon, for Defendants.

FREDERIC V. GORDON, called by defendant March 7, 1919, testified in open court as follows:

Was Associated with McLeod in the formation of the Thirty-two Oil Company. Had nothing to do with organizing the California Midway. Prior to January 1, 1909, had no information that McMurtry intended to make any new, other or different locations upon any of the McMurtry lands, including the northwest quarter of 32. First learned of this some time in January, 1909, at an informal meeting of the Thirty-Two Oil Company, when McLeod stated that he had been in Bakersfield and McMurtry told him he had located this property, and that he had made a new contract with him under the new locations. He said that if he had known McMurtry was going to relocate the property he would have done it himself, and for others who were interested in the Thirty-Two Company.

Cross-examination.

Yes, I had heard, in December, 1908, I think, that there were imperfections in the powers of attorney under which McMurtry was acting. Heard that at an informal, or it may have been a regular meeting

(Testimony of Frederic V. Gordon.)

of the Thirty-two Oil Company, or the men that were to organize it. McLeod told us. He was always the one to inform us, as he was looking after that. He said that the names were misspelled or initials wrong. I always understood that this happened in the San Benito County Recorder's Office, where they were recorded. McLeod said he thought these irregularities would be fixed up. No, there was no objection on the part of my company continuing with the work there after January 1, 1909, because McLeod stated the work would be for the benefit of the new locations. That is the way I understood it. There was no objection at this meeting in January, 1909, to this arrangement. We accepted it and agreed to it, consented to whatever had been done in regard to it. Presume I am the Gordon referred to [750—644] in this letter of November 14, 1909 (Plaintiff's Exhibit 66), but I didn't go to Clafin's office at that time. I didn't see any written contract at the time this information first came to me.

Redirect Examination.

Yes, in 1910 the company paid the purchase price for this sixty acres, \$60,000 in round numbers. [751—645]

Testimony of W. C. Price, for Defendants.

W. C. PRICE called by defendants March 7, 1919, testified in open court as follows:

Reside at Los Angeles, California, and have lived in that county since 1900. Since 1890 my business has been in this state, principally developing oil. Was one of the organizers of the Thirty-Two Oil

(Testimony of W. C. Price.)

Company who put up \$25,000. Wheat and Wilson had spent a lot of money on the ground, and the part we put up was to pay them back. This lease by Mrs. McLeod, Wheat, Wilson and McLeod to the California Midway Oil Company is what we bought. At the time of the organization of this company December 29, 1908, I was not advised by McLeod or anybody else that McMurtry or anybody else intended to locate the northwest quarter of 32 or any other property on January 1, 1909. Subsequent to that date McLeod, who was our managing director, at the time he brought me this information said that we would be protected and would receive a contract or lease in substance the same as what we had. As near as I can recall, he said he was being protected by McMurtry and he would protect us, but I don't recall his saying anything about a contract at that time. The California Midway was to be protected the same as we were. The work was to go on just the same under the new locators, whatever had been done would inure to the benefit of the new locators. I wasn't very much concerned because I believed it would be fixed up from what McLeod told me. [752—646]

Testimony of J. M. McLeod, for Defendants.

J. M. McLEOD, called by defendants March 7, 1919, testified in open court as follows:

Am not now a stockholder or creditor of either the California Oil Company or the Associated Oil Company. In November, 1908, four associates and myself organized the Cali-

(Testimony of J. M. McLeod.)

California Midway Oil Company, with an authorized stock of one million shares, of which my wife, Mrs. J. M. McLeod, received 200,000 shares for this original lease from McMurtry (Plaintiff's Exhibit 36). During December, 1908 and January, 1909, Mrs. McLeod and myself were the owners of such stock, and I was a director and field manager of the corporation. I put the lumber on the northwest quarter of 32 which went to construct California Midway Oil Company's well No. 1, and was subsequently repaid by the company. This derrick was not completed on January 1, 1909. Actual drilling of this well began January 10, 1909. Prior to January 1, 1909, I was not advised and didn't know that McMurtry or anyone else was going to locate that northwest quarter, or the so-called McMurtry lands on January 1, 1909; nor did I know that the original location notices on that quarter or any other so-called McMurtry lands had not been posted on the right quarter section. After talking this over with Claffin and McMurtry about my coming to Claffin's office about the 2d of January, 1909, and discussing the matter of these relocations of January 1, 1909, I am satisfied that that is the case, and that I learned of this then. As soon as I found out about the new locations being made I immediately asked where I and associates stood. I reminded McMurtry and Claffin that we had no agreements with these new locators, and we were not appraised of the fact that there was to be any. McMurtry assured me that they would make contracts similar to the one we had before on this

(Testimony of J. M. McLeod.)

piece of land, and such paper was then drawn. I now recall this clearly. This new agreement was made [753—647] before the actual drilling started. This 200,000 shares of the California Midway stock issued to Mrs. McLeod was then the only stock issued and she and I were practically the owners of the company. It was understood by all parties interested that the work the California Midway was doing on the quarter section was for the benefit of the whole quarter. Nothing was said between McMurtry and myself prior to January 1, 1909, about him, myself, or anybody else filing new locations on that property. Yes, the California Midway went right along between January 1, 1909 and May 17, 1909, and afterwards, with the development of that property. This company had an option to purchase it for \$1,000 an acre. Later Mrs. McLeod and I signed what interest we had on the other end of the transaction to the Thirty-Two Oil Company, in which company I held about one-seventh interest.

Cross-examination.

Wheat & Wilson were stockholders in the Thirty-Two Oil Company and members of the Wheat, Wilson, McLeod and Gordon association, which existed before the formation of the Thirty-Two Oil Company. Yes, in 1908 I was advised by my attorney, Mr. Claflin, that defects existed in the powers of attorney, and also something in regard to the mix-up in the location notices. I have seen one letter—don't know whether that is the one or not (Plaintiff's Exhibit 65.) I talked with Claflin

(Testimony of J. M. McLeod.)

about these defects prior to January 1, 1909. He said these names were wrong and that the powers of attorney—the certified copies—did not agree with the way the names were spelled in the location notices, as I remember it, and he said that could be fixed up. My experience in the real estate business in Los Angeles is that we would run up against something like that, and we would put in a deed that John Jones, sometimes known as Henry Miller, or something like that,—a similar name,—those things were easily [754—648] taken care of, and I expected that Mr. Claflin would go on and have that matter straightened up in that way. I left the matter entirely to him. I wanted it fixed up, as we had already started to carry out that contract of October 8, 1908, (Plaintiff's Exhibit 36). We continued just as before to lay water lines and get material ready. My recollection is that my understanding after this conversation with Claflin was that he would get McMurtry to get new powers of attorney, or correct the faults. Yes, as I then understood it, the locations would be practically worthless if we could not straighten them out. But I had in mind that McMurtry would correct these faults, and I looked to him to do so, so that I might have my rights under the contract of October 8, 1908. After I discovered these locations had been made on January 1, 1909, I accepted the new contract which was practically the same as the contract of October 8, 1908, as it had been amended. [755—649]

Testimony of A. H. Ricketts, for Defendants.

A. H. RICKETTS, called by defendants, April 6, 1919, testified in open court as follows:

Am an attorney at law of San Francisco. Have practiced in California since 1884, with the exception of 11 years in Nevada. Have practiced mining law exclusively since 1886, and am familiar, in a general way, with the manner of locating and preserving location rights up to the granting of patent in the San Joaquin Valley, which includes Kern River, Coalinga, Lost Hills, Midway, Maricopa and other localities where oil has been found. The first step is usually the posting of a written notice upon the claim, and then—or perhaps just immediately prior thereto—the demarcation of the boundaries upon the surface, if it is on unsurveyed land, and by describing in the notice of location the legal subdivision wherein the property that is sought to be appropriated may lie; then a copy of the notice of location as posted is recorded usually with the county recorder, and if there should so exist, also with the Mining Recorder of the district in which the land lies. Immediately subsequent to the second calendar year after the location, if such be the fact, a certificate, or affidavit, rather, or annual labor on that particular claim is filed by or on behalf of the locators thereof at least in the County Recorder's office. The general custom has been to continue to do \$100 worth of work each year until discovery. And there has been a general custom regarding a chain of title to show the location by

(Testimony of A. H. Ricketts.)

annual proofs of labor as a merchantable and transferable right by the general public and buyers and sellers of oil land. It has been the custom for locators to sell or lease lands so held.

Cross-examination.

Yes, what I have testified to is based almost entirely upon my examination of abstracts of title. No, I never was at a miners' meeting and never discussed such customs or habits with miners of the Midway field. [756—650]

Testimony of Isaac Strassburger, for Defendants.

ISAAC STRASSBURGER, called by defendants March 5, 1919, testified in open court as follows:

Reside in San Francisco. Am and have been engaged in the oil business in the Midway Field, California, since 1899, and know the locality generally known as the North Midway Field in which the lands in suit are. There was no pipeline in that field in 1909. Yes, I knew the general custom in this state at that time among persons who were mining for oil on the question of work and recognized work on the public lands. Eight men would go to work and locate the claim, or two claims, or a dozen claims, or a hundred claims. And these eight locators in a good many cases didn't have much money. They contributed simply their work in locating the lands, and would hunt up somebody that had some means and offer them

(Testimony of Isaac Strassburger.)

the lands for development purposes, and offer to sell out, either for money or lease the lands on a royalty—any basis that they could, because they didn't have the means themselves to develop the lands. The rights of the locators were paramount and recognized by everybody, so much so that if we knew that a certain piece of land was located by certain parties, why everybody kept away from it, to a great extent. There were some exceptions, it is true. The assessment work was the same that was done since the year one. Every man that had a location tried to do and did do a hundred dollars worth of work to keep his claim alive, filed the proof of such work, and such claims were recognized by custom as entitling the locator to hold it until oil was discovered. That was not only the custom, but most of the men thought it was the law. I did. And title of such character, even before discovery, was recognized by custom and bought and sold. Practically every claim in the field was located and held in this way, for money or for royalty. I did it myself and it was the universal way of doing business. [757—651]

Testimony of S. P. Wible, for Defendants.

S. P. WIBLE, called by defendants March 6, 1919, testified in open court as follows:

Reside in Bakersfield, California, and have been acquainted with the Kern River Oil Field ever since it started in 1899 or 1900, and the Midway Oil Field, including its subdivisions—Buena Vista Hills, North Midway, Midway proper, Maricopa,

(Testimony of S. P. Wible.)

and so forth; also the McKittrick, Belle Ridge and Lost Hills Oil fields. Have been engaged in the petroleum business and development of lands in Kern County for petroleum for the last 18 years. There was never any organization or association, with written rules or minutes, or anything of that kind, in the petroleum business in Kern County to my knowledge. Yes, there was a general practice, habit or custom with regard to locating public lands. The general method was to locate the land with a set of locators, generally eight locators to the quarter section; record the notices at the County Recorder's office; and the second year after the location there was generally done \$100 worth of assessment work of some kind, and we worked along that way until the land was developed for oil, doing assessment work each year until discovery of oil, and record the notices of assessment work in the County Recorder's office. After discovery application for patent would be made. Yes, sales of the rights of such locators were made before discovery. It was the general custom for the locator to contract with someone to develop and give them half the lands when patent was obtained. There never was supposed to be any limit to the number of locations you could make. It was considered legitimate for the same set of locators to locate more than one mining claim.

Cross-examination.

Yes, the purpose of posting notices on the land prior to discovery was to protect the locators

(Testimony of S. P. Wible.)

against “jumpers” or other [758—652] people who might attempt to place locations upon the land. I now know that such locations gave the locators no right against the United States, but didn’t know it then.

Redirect Examination.

Yes, I understood that the posting of the notices of location was a compliance with the law, and that upon discovery of oil such discovery would relate back to the date of the notice of location. [759—653]

Testimony of Walter Snook, for Defendants.

WALTER SNOOK, called by defendants March 6, 1919, testified in open court as follows:

Reside at Maricopa, Kern County, California, and have resided there for nearly 19 years. Nineteen years ago I was developing property where Maricopa is now, and have since been engaged in the oil business in Kern County. Knew the country known as the Midway District from 1906 to 1909. That land was a desert up to 1909. Had no value for agriculture. Never heard of any placer miners or petroleum miners’ organization which adopted rules. The general method of appropriating public lands was, first, to find some land that was not claimed by anybody else, that was somewhere in an oil belt, that was prospectively good for oil purposes, and that was vacant; to locate the land by defining the boundaries, marking the corners and setting up a location notice on each claim with

(Testimony of Walter Snook.)

the names of the parties claiming the land. Each person was entitled, as I understood it, to 20 acres in his own name, and after posting the notice, to file a copy with the County Recorder's Office. That gave you a claim on the land for the first year. And then the second year a certain amount of work had to be done on each claim—at least \$100 worth, and proof of labor was to be filed in the County Recorder's Office. That was done yearly until discovery. Then patents were applied for or the claim worked as a mining claim. The work done each year was supposed to give you title—to keep your title in good shape. Yes, if a locator failed to do this yearly work the claim was considered to have been abandoned. The locators as a rule were men without the means of developing; and after they had what they thought was a claim they would try to get capital interested to develop the land and make a discovery, either by a division of the land or on the royalty basis. It was my understanding that you could locate as many claims as you wished, provided [760—654] you used eight names for a quarter section. This was quite generally done and nobody thought there was anything wrong about it.

Cross-examination.

Yes, at that time it was not unusual for claims to be jumped; but there were comparatively few complaints over claims which had been posted. Yes, I have heard of lands covered by these paper locations being protected by armed men to keep off jumpers, but had no personal knowledge of this.

(Testimony of Otis E. Wern.)

STIPULATED that if called by defendants Colin Whittier, M. H. Whittier, E. A. Doran, J. M. Danziger, E. J. Miley, F. Chappelet, W. B. Scott, E. A. Clampet, W. W. Orcutt, and Joseph B. Dabney would testify on direct and cross-examination substantially the same as witnesses Wible and Snook, and that there have been cases where men did not regard the paper locations and attempted to jump them, and that there have been fights about it. [761—655]

Testimony of Otis E. Wern, for Defendants.

OTIS E. WERN, called by defendant March 7, 1919, testified in open court as follows:

Am Secretary of the California Midway Oil Company and have in my possession its books of account, papers and vouchers. Have been upon its property in Section 32 indicated on this blue-print (Defendants' Exhibit "Q-1"), which seems to be correct in that respect. This company is now and has been for some time producing from its wells Nos. 4, 5 and 10 on such land about 64 barrels of oil per day. Well No. 1 was abandoned, and there were no wells Nos. 2, 3 and 6. This statement (Defendants' Exhibit "P-1") shows production from other lands as well as this 60 acres. There was produced from this 60 acres about as follows: In 1910, well No. 1, 78,747 barrels; in 1911, wells Nos. 1 and 4, 97,193 barrels; in 1912, wells Nos. 1, 4 and 5, 39,750 barrels; in 1913, wells 1, 4 and 5, 45,761; in 1914, wells 1, 4 and 5, 35,000 barrels;

(Testimony of Otis E. Wern.)

in 1915, wells 1, 4 and 5, 38,000 barrels; in 1916, wells 1, 4, 5 and 10, 34,000 barrels; 1917, wells 1, 4, 5 and 10, 32,000 barrels; and in 1918, wells 1, 4, 5 and 10, 28,000 barrels. That includes some water which was excluded before it was sold, and this well No. 10 was the last well drilled or begun.

This statement (Defendants' Exhibit S-1) shows the monthly expenditures by this company upon this property, exclusive of the purchase price.

STIPULATED that Defendants' Exhibits "U-1" and "V-1" shows the improvements and production upon the lands involved claimed by the Associated Oil Company, and that defendant could produce a competent witness who would testify that there were no other improvements on said lands or begun thereon. [762—656]

PLAINTIFF'S EXHIBITS.

Plaintiff's Exhibits Nos. 2 and 3.

Affidavit of locator George E. Meinecke and a letter attached thereto, which were read into the deposition of Meinecke.

Plaintiff's Exhibit No. 4.

"POWER OF ATTORNEY.

"Know All Men by These Presents: That Herbert M. Walker, W. A. Keenan, H. E. Bashore, C. Rupert Walker, R. B. Welch, Eugene Metz, F. H. Romaine, Jr., William Mahn, citizens of the United States of America, over the age of 21 years, residents of New York City, in the State of New York, have made, constituted and appointed, and

by these presents do for ourselves, our heirs and assigns, make, constitute and appoint L. B. McMurry of the city of San Francisco, County of San Francisco, and State of California, our true agent and lawful attorney, irrevocably for ourselves and in our name, place and stead, for the following purposes, viz.:

“To prospect, stake out, record, locate, duly enter and file upon any gold mining claim or claims, either lode or placer, subject to location and entry under and by virtue of the United States Mining Laws in any part of the United States of America.

“To prospect, locate, stake out, record, duly enter and file upon any mineral claim or claims of any character or nature whatever subject to location and entry under and by virtue of the United States Mining Laws in any part of the United States of America.

“To improve, develop, make proof thereof, and perfect the title to be acquired under such entry or entries as required by law.

“To grant, bargain, sell, assign, lease, pledge, mortgage or deed any part or all of such mining claim or claims and to make, sign, execute and deliver any contract or contracts of sale, deed or deeds conveying any part or all of our interest or interests in or to any such mining claim or claims, as may be acquired hereunder in any part of the United States of America, giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatever required and necessary to be done in and

about the premises as fully to all intents and purposes as we might or could do if personally present with full power of substitution and revocation hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue thereof. [763—657]

“In Witness Whereof, we have hereunto set our hands and seals this 19th day of December, A. D. 1907.

“HERBERT M. WALKER. (Seal)

“H. E. BASHORE. (Seal)

“R. B. WELCH. (Seal)

“F. H. ROMAINE, Jr. (Seal)

“W. A. KEENAN. (Seal)

“C. RUPERT WALKER. (Seal)

“EUGENE METZ. (Seal)

“WM. MAHN. (Seal)”

Executed Dec. 19, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 5.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bearing the following names as signers: Samuel R. Banks, Frank B. Chapman, Julian P. W. Richmond, Frederick S. Thorn, Chas. W. Gardiner, Harry B. Thorn, Geo. W. Berry, and Geo. A. Meinecke.

Executed Dec. 21, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 6.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: Francis E. Pratt, J. C. Thickers, Wm. F. Christman, Mark W. Hatch, Hamlin E. Hatch, T. R. Bailey, Walter Wilson, J. E. Fanell.

Executed Dec. 19, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909. [764—658]

Plaintiff's Exhibit No. 7.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder, and F. H. Searls.

Executed Dec. 18, 1907. Recorded in San Benito County, California, April 13, 1908, and in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 8.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: Bert S. Denison, Hokan Roll, Thomas H. Lee, J. L. Bacon, J. H. Dolbers, W. G. Mahoney, H. Dagenbuck, R. E. Pierce, C. W. Nettels, F. H. Denison, G. A. Morningstar, J. F. Gorman, Jesse Cunningham, Simon Newhof, H. B. Reutschler, and A. A. Converse.

Executed Dec. 21, 1903. Recorded in San Benito County, California, Dec. 29, 1903, and in Kern County, California, November 9, 1908.

Plaintiff's Exhibit No. 9.

Power of attorney similar in form to Plaintiff's Exhibit 4, and bears the following names as signers: F. P. Blackman, A. J. Rowley, Harry Sterling, W. Y. Husbands, B. N. O'Neill, D. G. Cunningham, James Clifford, John Ryan, Joseph Norton, James Norton, A. L. Johns, H. T. Hunt, W. Michals, T. G. Cranston, Wm. Jones, and C. A. Dunbar.

Executed December 21, 1903. Recorded in San Benito County, California, December 29, 1903, and in Kern County, California, November 9, 1908. [765—659]

Plaintiff's Exhibit No. 10.

"LOCATION NOTICE—PLACER CLAIM.

"Notice is hereby given that the undersigned citizens of the United States, over the age of twenty-one years, in compliance with the requirements of Chapter VI, Title 32 of the Revised Statutes of the United States, and the local customs, laws and regulations have this day located and claim the following described placer mining ground, viz.:

"The Northwest quarter of Section Thirty-two (32), Township Thirty-one (31) So., Range Twenty-three (23) East, M. D. B. & M.

"That said land is located for the purpose of developing petroleum, gypsum and other minerals therein and thereon.

"Situated in the Midway Mining District, County of Kern, State of California.

“This claim shall be known as the Montana placer mining claim.

“Located first day of January, 1909.

“The date of the discovery and the posting of this notice is the first day of January, 1909.

“HERBERT M. WALKER.

“H. E. BASHORE.

“R. B. WELCH.

“F. H. ROMAINE, Jr.

“W. A. KEENAN.

“C. RUPERT WALKER.

“EUGENE METZ.

“WILLIAM MAHN.

“Witness: L. B. McMURTRY.”

Recorded in Kern County, California, January 5, 1909.

Plaintiff's Exhibit No. 11.

This exhibit embraces nineteen mining location notices, dated January 1, 1909, and recorded January 5, 1909, at the request of L. B. McMurtry.

Five of these notices bear the names of the signers of the power of attorney, Plaintiff's Exhibit 4, as follows:

Indiana, covering NW. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.;
Maine, covering NW. $\frac{1}{4}$ Sec. 20 T. 31 S., R. 23 E.;
Rhode Island, covering NW. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Pennsylvania, covering NW. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Texas, covering NW. $\frac{1}{4}$ Sec. 28, T. 31 S., 23 E.;

Five of these notices bear the names of the signers

of the power of attorney, Plaintiff's Exhibit 5, as follows:

Minnesota, covering SE. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.; [766—660]

Massachusetts, covering SE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 23 E.;

New Jersey, covering SE. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Virginia, covering SE. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Wisconsin, covering SE. $\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E.;

Four of these notices bear the names of the signers of the power of attorney, Plaintiff's Exhibit 6, as follows:

Iowa, covering SW. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.;

Vermont, SW. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 23 E.;

New York, covering SW. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Michigan, covering SW. $\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E.;

Five of these notices bear the names of the signers of the power of attorney, Plaintiff's Exhibit 7, as follows:

Illinois, covering NE. $\frac{1}{4}$ Sec. 34, T. 31 S., R. 23 E.;

New Hampshire, covering NE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 23 E.;

Connecticut, covering NE. $\frac{1}{4}$ Sec. 22, T. 31 S., R. 23 E.;

Delaware, covering NE. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Ohio, covering NE. $\frac{1}{4}$ Sec. 28, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 12.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4, as follows:

Dundos, covering NW. $\frac{1}{4}$ Sec. 13, T. 31 S., R. 23 E. Dated March 6, 1909, recorded March 13, 1913, at request of J. E. Harrison.

Florida, covering NW. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E. Dated January 1, 1909. Recorded January 5, 1909, at request of L. B. McMurtry.

Wyoming, covering NW. $\frac{1}{4}$ Sec. 4, T. 32 S., R. 23 E. Dated January 1, 1909. Recorded January 5, 1909, at request of L. B. McMurtry. [767—661]

Plaintiff's Exhibit No. 13.

This exhibit embraces seven placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7, as follows:

Ontario, covering NE. $\frac{1}{4}$ Sec. 13, T. 31 S., R. 23 E. Dated March 6, 1909. Recorded March 13, 1909, at request of J. E. Harrison.

Alabama, covering NE. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E. Dated Jan. 1, 1909. Recorded Jan. 5, 1909, at request of L. B. McMurtry.

Idaho, covering NE. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E. Dated Jan. 1, 1909. Recorded Jan. 5, 1909, at request of L. B. McMurtry.

Nebraska, covering NE. $\frac{1}{4}$ Sec. 4, T. 32 S., R. 23 E. Dated Jan. 1, 1909. Recorded Jan. 5, 1909, at request of L. B. McMurtry.

Kansas, covering NE. $\frac{1}{4}$ Sec. 9, T. 32 S., R. 23 E.

Dated Jan. 1, 1909. Recorded Jan. 5, 1909 at request of L. B. McMurtry.

Gem #1, covering NW. $\frac{1}{4}$ Sec. 5, T. 32 S., R. 23 E. Dated June 27, 1909. Recorded June 29, 1909, at request of L. B. McMurtry.

Hawk, covering NE. $\frac{1}{4}$ Sec. 7, T. 32 S., R. 23 E. Dated May 10, 1909. Recorded May 27, 1909, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 14.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6, dated January 1, 1909, and recorded January 5, 1909, at request of L. B. McMurtry, as follows:

Mississippi, covering SW. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E.;

Maryland, covering SW. $\frac{1}{4}$ Sec. 26, T. 31 S., R. 23 E.;

Napa, covering SW. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E.
[768—662]

Plaintiff's Exhibit No. 15.

This exhibit embraces two placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5, dated January 1, 1909, and recorded January 5, 1909, at request of L. B. McMurtry, as follows:

Louisiana, covering SE. $\frac{1}{4}$ Sec. 24, T. 31 S., R. 23 E.;

Modoc, covering SE. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 16.

This exhibit embraces four placer mining location notices dated July 16, 1909, and recorded July 26, 1909, at request of L. M. Cox, as follows:

Midas, covering NW. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4;

Douglas, covering NE. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7;

Greenwich, covering SW. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6;

Aberdeen, covering SE. $\frac{1}{4}$ Sec. 27, T. 32 S., R. 23 E. and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Plaintiff's Exhibit No. 17.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows: [769—663]

Georgia, covering NW. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;
Paradox No. 1, covering NW. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.;

Faith, covering NW. $\frac{1}{4}$ Sec. 10, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 18.

Quitclaim deed, dated March 8, 1909, from the persons in whose names said placer locations Georgia, Paradox No. 1 and Faith were made (Plaintiff's Ex-

hibit 17), by L. B. McMurtry, attorney in fact, to Sue Greenleaf, embracing the lands included in such locations. Consideration \$10.00. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf.

Plaintiff's Exhibit No. 19.

This exhibit embraces three placer mining location notices bearing the names appearing as the signers of the power of attorney, Plaintiff's Exhibit 7, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows:

Waterloo, covering NE. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;
Paradox, No. 2, covering NE. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.;

Acme, covering NE. $\frac{1}{4}$ Sec. 10, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 20.

Quitclaim deed, dated March 8, 1909, from the persons in whose names said placer locations Waterloo, Paradox No. 2 and Acme were made (Plaintiff's Exhibit 19), by L. B. McMurtry, attorney in fact, to Sue Greenleaf, embracing the lands included in such locations. Consideration \$10. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf. [770—664]

Plaintiff's Exhibit No. 21.

This exhibit embraces three placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows:

Louisiana, covering SW. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;

Paradox No. 3, covering SW. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.;

Saint Anthony, covering SW. $\frac{1}{4}$ Sec. 10, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 22.

Quitclaim deed, dated March 8, 1909, from the persons in whose names said placer locations Louisiana, Paradox No. 3, and Saint Anthony were made (Plaintiff's Exhibit 21), by L. B. McMurtry, Attorney in fact, to Sue Greenleaf, embracing the lands included in such locations. Consideration \$10. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf.

Plaintiff's Exhibit No. 23.

This exhibit embraces two placer mining location notices bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5, dated March 6, 1909, and recorded March 8, 1909, at request of J. T. Abbott, as follows:

Kentucky, covering SE. $\frac{1}{4}$ Sec. 4, T. 31 S., R. 23 E.;

Paradox No. 4, covering SE. $\frac{1}{4}$ Sec. 6, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 24.

Quitclaim deed dated March 8, 1909, from the persons in whose names said placer locations Kentucky and Paradox No. 4 were made (Plaintiff's Exhibit 23), by L. B. McMurtry, attor-

ney in fact, to Sue Greenleaf, embracing the lands included in such locations. [771—665] Stated consideration \$10. Executed March 8, 1909. Recorded March 8, 1909, at request of Sue Greenleaf.

Plaintiff's Exhibit No. 25.

This exhibit embraces four placer mining location notices, dated March 18, 1909, and recorded March 26, 1909, at request of W. C. Rupert, and one quitclaim deed, as follows:

Portland, covering NW. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4.

Oregon, covering NE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7.

Anheuser, covering SW. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6.

Dalles, covering SE. $\frac{1}{4}$ Sec. 20, T. 31 S., R. 24 E., and bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Quitclaim deed dated March 17, 1909, from the persons in whose names said placer locations Portland, Oregon, Anheuser, and Dallas were made, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the lands included in such locations. Consideration \$10. Executed March 9, 1910. Recorded March 10, 1910, at request of Bakersfield Abstract Company.

Plaintiff's Exhibit No. 26.

This exhibit embraces nine placer mining location notices, dated January 1, 1909, and recorded January 4, 1909, at request of D. Kinsey, and four quitclaim deeds, as follows: [772—666]

Mischief #12, covering SW. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4.

Mischief #8, covering SW. $\frac{1}{4}$ Sec. 2, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 4.

Quitclaim deed dated February 5, 1909, from the persons in whose names said placer locations Mischief #12 and Mischief #8 were made, by L. B. McMurtry, attorney in fact, to David Kinsey. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1910, at request of David Kinsey.

Mischief #10, covering NW. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7.

Mischief #7, covering NW. $\frac{1}{4}$ Sec. 12, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 7.

Quitclaim deed, dated February 5, 1909, from the persons in whose names said placer locations Mischief #10 and Mischief #7 were made, by L. B. McMurtry, attorney in fact, to David Kinsey. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1909, at request of David Kinsey.

Mischief #9, covering NE. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6.

Mischief #4, covering NE. $\frac{1}{4}$ Sec. 12, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 6.

Mischief #5, covering NE. $\frac{1}{4}$ Sec. 14, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's [773—667] Exhibit 6.

Quitclaim deed dated February 5, 1909, from the persons in whose names said placer locations Mischief #9, Mischief #4 and Mischief #5 were made, by L. B. McMurtry, attorney in fact, to David Kinsey, embracing the lands included in such locations. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1910, at request of David Kinsey.

Mischief #11, covering SE. $\frac{1}{4}$ Sec. 1, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Mischief #6, covering SE. $\frac{1}{4}$ Sec. 3, T. 31 S., R. 24 E., bearing the names of the signers of the power of attorney, Plaintiff's Exhibit 5.

Quitclaim deed, dated February 5, 1909, from the persons in whose names said placer locations Mischief 11 and Mischief 5 were made, by L. B. McMurtry, attorney in fact, to David Kinsey, embracing the lands included in such locations. Consideration \$10. Executed February 10, 1909. Recorded April 18, 1909, at request of David Kinsey.

Plaintiff's Exhibit No. 27.

This exhibit embraces thirty-three placer mining location notices, dated January 1, 1909, and re-

corded March 27, 1909, at request of P. R. Longley, and two grant deeds, as follows:

Elite Numbers Eight, Twelve, Twenty, Twenty-four, Twenty-seven, Thirty-three, Thirty-seven, and Forty-one, covering the northwest quarter of Sections 2, 3, 5, 6, 7, 9, 10 and 11, respectively, of T. 31 S., R. 24 E., and each made in the names of the persons who signed the power of attorney, Plaintiff's Exhibit 4;

Elite Numbers Seven, Eleven, Nineteen, Twenty-three, [774—668] Twenty-six, Thirty-two, Thirty-six and Forty, covering the northeast quarter of sections 2, 3, 5, 6, 7, 9, 10 and 11, respectively, of T. 31 S., R. 24 E., and each made in the names of the persons who signed Plaintiff's Exhibit 7;

Elite Numbers Ten, Eighteen, Twenty-two, Twenty-nine, Thirty-one, Thirty-five, Thirty-nine, and Forty-three, covering the southwest quarter of sections 3, 5, 6, 8, 9, 10, 11 and 12, respectively, T. 31 S., R. 24 E., and each bearing the names appearing on Plaintiff's Exhibit 6;

Elite Numbers Five, Seventeen, Twenty-one, Twenty-five, Twenty-eight, Thirty, Thirty-four, Thirty-eight, and Forty-two, covering the southeast quarter of sections 2, 5, 6, 7, 8, 9, 10, 11 and 12, respectively, of T. 31 S., R. 24 E., and bearing the names appearing on Plaintiff's Exhibit 5;

Grant deed, dated April 9, 1909, from the persons in whose names said placer locations were made, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the lands included in such locations, namely, N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 2; N. $\frac{1}{2}$ and

SW. $\frac{1}{4}$ sec. 3; all of secs. 5 and 6; N. $\frac{1}{2}$ and SE. $\frac{1}{4}$ sec. 7; S. $\frac{1}{2}$ sec. 8; all of secs. 9, 10 and 11; S. $\frac{1}{2}$ sec. 12, all in T. 31 S., R. 24 E., M. D. B. & M. Consideration \$10. Recorded May 10, 1909, at request of J. M. McLeod;

Grant deed, dated August 1, 1910, from J. M. McLeod and Eva E. McLeod, his wife, to Esperanza Consolidated Oil Company, a corporation, embracing certain described portions of said sections 10, 11 and 12, T. 31 S., R. 24 E., together with other lands. Consideration \$10. Executed August 1, 1910. Recorded August 10, 1910, at request of Chas. W. Slack. [775—669]

Plaintiff's Exhibit No. 28.

Atlanta placer mining location notice covering NW. $\frac{1}{4}$ sec. 32, T. 31 S., R. 23 E., made in the names of eight of the signers of the power of attorney, Plaintiff's Exhibit 8, namely: J. L. Bacon, J. H. Dolbers, W. H. Mahoney, C. W. Nettels, Thomas H. Lee, Hokan Roll, Bert S. Dennison, and H. Hagenbuck. Dated January 3, 1907, and recorded January 5, 1907, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 29.

This exhibit embraces twenty-six placer location notices covering various quarter-sections of land in T. 31 S., R. 23 E., each bearing the names of eight of the signers of the powers of attorney, Plaintiff's Exhibits 8 and 9. Dated January 1 and January 3, 1907, and recorded January 5, 1907, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 30.

Assignment and conveyance from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to C. L. Claflin *or* all right, title and interest in certain agreements (Plaintiff's Exhibits 33, 53, 55 and 57) and "all of said parcels of land described in said agreements, as aforesaid." Acknowledged December 3, 1909, and recorded December 6, 1909, at request of L. B. McMurtry. [776—670]

Plaintiff's Exhibit No. 31.

Assignment and conveyance from C. L. Claflin to L. B. McMurtry of all of the right, title and interest assigned and conveyed in Plaintiff's Exhibit 30. Acknowledged December 4, 1909, and recorded December 6, 1909, at request of L. B. McMurtry.

Plaintiff's Exhibit No. 32.

Assignment by L. B. McMurtry and the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to Pacific Oil Lands Company, of all right, title and interest in nine drilling agreements, dated August 4, 1910, in which Associated Oil Company, W. F. Herrin, W. S. Porter, J. C. Kirkpatrick, R. P. Schwerin, O. Scribner, Paul Shoup, Rudolph Herold, Jr., and Frank H. Buck are first parties, and L. B. McMurtry and the signers of said powers of attorney are second parties, each of said agreements (of which Defendants' Exhibit "K" is one) covering one of the following tracts of land, namely:

- Tract 1. 160 acres in N. $\frac{1}{2}$ sec. 32, T. 31 S., R. 23 E.
- Tract 2. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 20, T. 31 S., R. 23 E.
- Tract 3. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 20, T. 31 S., R. 23 E.
- Tract 4. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 22, T. 31 S., R. 23 E.
- Tract 5. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 22, T. 31 S., R. 23 E.
- Tract 6. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 26, T. 31 S., R. 23 E.
- Tract 7. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 26, T. 31 S., R. 23 E.
- Tract 8. 160 acres in N. $\frac{1}{2}$ N. $\frac{1}{2}$ sec. 34, T. 31 S., R. 23 E. [777—671]
- Tract 9. 160 acres in S. $\frac{1}{2}$ S. $\frac{1}{2}$ sec. 34, T. 31 S., R. 23 E.

“Also, all our right, title and interest in and to that certain agreement made and entered into the 17th day of May, 1909, between the undersigned as parties of the first part, and J. M. McLeod party of the second part, covering the following described real property situate in the County of Kern, State of California, to wit”:

Sec. 24, T. 31 S., R. 23 E., M. D. B. & M.

Executed Sept. 1, 1911, and recorded September 8, 1913, at request of Pacific Oil Lands Co.

Plaintiff's Exhibit No. 33.

Development agreement dated May 17, 1909, between the signers of the powers of attorney, Plain-

tiff's Exhibits 4 and 7, by L. B. McMurtry, attorney in fact, and J. M. McLeod, as follows:

“WITNESSETH: That whereas, the said parties of the first part were prior to this day the owners of that certain lot, piece or parcel of petroleum land situate, lying and being in the County of Kern, State of California, to wit: the north half of Section Thirty-two (32), in Township Thirty-one (31), South of Range Twenty-three (23) East, M. D. B. & M., and,

“Whereas the said parties of the first part have heretofore this day duly conveyed said parcel of land to said party of the second part, and

“Whereas, the said party of the second part has heretofore erected a suitable derrick for use in drilling an oil well with a standard drilling rig upon the South half of the Northwest quarter and upon the South half of the Northeast quarter of said Section Thirty-two (32), and has also erected on said North half of said section of land all bunk-houses which will be necessary for use in conducting drilling operations on said North half of said Section Thirty-two (32), and has also commenced the actual work of drilling for oil with a standard drilling rig and tools, at the point where one of said derricks was erected, to wit: on the Northwest quarter of said section:

“Now, therefore, in consideration of said conveyance said party of the second part hereby agrees as follows:

“1. To continue said work of drilling at the point where the same is now being done diligently

with said rig until he shall have reached a depth of at least Twenty-five hundred feet or until he shall have discovered oil in paying quantities at a lesser depth. [778—672]

“2. Said party of the second part further agrees that within thirty days after the discovery of oil in paying quantities in said well, he will begin the actual work of drilling for oil on the remaining quarter-section of said land and at the point where the remaining derrick on said section has been erected as hereinbefore provided, and will continue such drilling diligently until a depth of 2,500 feet is reached in said last mentioned well or until oil is discovered therein in paying quantities at a lesser depth.

“3. The said party of the second part further agrees that when oil in paying quantities shall be discovered upon other quarter-sections of the land hereinbefore described, he will immediately make application to the Government of the United States for Letters Patent to said quarter-section of land, and that when the Receiver's Final Receipt therefor is issued, he will by a good and sufficient deed of grant, bargain and sale, convey to the said parties of the first part the North one hundred acres of such quarter-section.

“It is mutually agreed that all costs, expenses and disbursements incurred in procuring said letters patent shall be paid by the respective parties hereto in equal shares, that is to say, the said parties of the first part will pay one-half thereof and the said

party of the second part will pay the remaining one-half.

“It is expressly agreed that oil in paying quantities within the terms of this agreement shall mean a well that will produce 25 barrels of crude petroleum during each twenty-four hours of continuous pumping.

“It is further mutually agreed that time is of the essence of this agreement, and that if the said party of the second part shall fail to perform any obligations agreed to be performed by him under the terms of this agreement, and within the time hereinbefore provided therefor, he will forfeit all rights hereunder and the said parties of the first part may immediately take possession of all of said property and the said party of the second part will immediately reconvey all of said North half of said Section 32 to said parties of the first part.

“IT is further agreed that all the terms, conditions and obligations of this agreement shall bind the parties hereto and their heirs, executors and administrators and assigns.”

Executed May 28, 1909, and recorded August 6, 1909, at request of C. L. Claffin.

Said agreement bears the following endorsements:

“Full assignment of within agreement to L. B. McMurtry. See Book 5, page 363 of Assignments.

CHAS. A. LEE,

County Recorder.

By R. C., Deputy.”

“Full assignment of within agreement to C. L. Claflin. See Book 5, page 359 of Assignments.

CHAS. A. LEE,

County Recorder.

By R. C., Deputy.”

“Full assignment of within agreement to 32 Oil Co. See Book 5, page 354 of Assignments.

CHAS. A. LEE,

County Recorder.

By R. C., Deputy.” [779—673]

Plaintiff's Exhibit No. 34.

Quitclaim deed, dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4 and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing N. 1/2 sec. 32, T. 31 S., R. 23 E. Consideration \$10. Executed May 17, 1909, and recorded August 6, 1909, at request of C. L. Claflin.

Plaintiff's Exhibit No. 35.

Grant deed, dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7 by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing sec. 34 and N. 1/2 sec. 32, T. 31 S., R. 23 E. Consideration \$10. Executed May 17, 1909, and recorded June 29, 1909, at request of J. M. McLeod.

Plaintiff's Exhibit No. 36.

Development agreement, dated October 8, 1908, between the signers of the powers of attorney, Plaintiff's Exhibits 8 and 9, by L. B. McMurtry, attorney in fact, and Mrs. J. M. McLeod, as follows:

“WITNESSETH, that whereas the said parties of the first part are the owners of all of Section Thirty-two (32) in Section Thirty-one (31) South, of Range Twenty-three (23) East, M. D. B. & M., in Kern County, California, bases upon the certain placer mining locations, and

“Whereas, said parties of the first part are desirous of having the said land prospected for petroleum and of securing letters patent from the Government of the United States for said land, and

“Whereas, the said parties of the second part in consideration of the covenants hereinafter contained on the part of the said parties of the first part is willing to undertake the drilling for petroleum on said land;

“Now, therefore, the said party of the second part agrees to proceed diligently to drill at his own cost, one well in the exact center of said section of land with a standard rig and string of tools, and the said parties of the first part agree that when said party of the second part has discovered oil in said well, they will upon demand of the said party of the second part, immediately proceed to make application to the Government of the United States for letters patent to said land,— [780—674]

“It is further agreed that said party of the second part shall pay one-half of the proper expenses and cost of procuring such patent, and that when final receiver's receipts for the purchase price of said land are issued, said parties of the first part will upon demand of said party of the second part, execute a grant, bargain and sale deed conveying

to said party of the second part the following portions of said section of land, to wit: The whole of the North half of the X South half and the South half of the North half of said Section Thirty-two (32), being a total of Three hundred and twenty (320) acres.

“It is further agreed that all the stipulations, agreements, covenants and conditions herein contained shall bind the heirs, executors, administrators and assigns of the parties and each of the parties hereto.”

Plaintiff's Exhibit No. 37.

“THIS IS TO CERTIFY that for and in consideration of the sum of one dollar, and other valuable considerations, I have this day sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and convey to W. D. Wilson, W. R. Wheat and F. V. Gordon, an undivided three-fourths ($\frac{3}{4}$) interest in and to all lands acquired by me, either by lease or agreement for deed, in section 32, Township 31 S., Range 23 E., M. D. M., and also in section 4, Township 32 S., Range 23 E., M. D. M., said lands having been acquired by me from L. B. McMurtry et al., the said Wilson, Wheat and Gordon having acquired each an undivided one-quarter ($\frac{1}{4}$) interest in said lands from me.

“IN WITNESS WHEREOF I have hereunto set my hand and seal this 20th day of November, 1908.

MRS. J. M. McLEOD,

By J. M. McLEOD,

Her Attorney in Fact.”

Executed Nov. 20, 1908.

Plaintiff's Exhibit No. 38.

Development agreement, dated November 11, 1908, between W. D. Wilson, W. R. Wheat, J. M. McLeod and F. V. Gordon, of the first part, and W. C. Price, Wm. Lacy and R. H. Lacy, of the second part, affecting the N. $\frac{1}{2}$ sec. 4, T. 32 S., R. 23 E., and N. $\frac{1}{2}$ S. $\frac{1}{2}$ and South 120 acres of sec. 32, T. 31 S., R. 23 E. [781—675]

Plaintiff's Exhibit No. 39.

Lease dated November 26, 1908, from Mrs. J. M. McLeod to California Midway Oil Company, a corporation, embracing 60 acres of S. $\frac{1}{2}$ NW. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E., running to November 4, 1928, with right of renewal, for drilling for and producing oil and gas and other minerals, and containing stipulations as to forfeiture.

Plaintiff's Exhibit No. 40.

“ASSIGNMENT OF INTERESTS IN SECTION
32.

“THIS IS TO CERTIFY that for and in consideration of the sum of Eight Thousand Dollars, to us in hand paid, the receipt whereof is hereby acknowledged, we have this day sold, assigned, transferred and set over and do hereby sell, assign, transfer and set over to the 32 Oil Company, a corporation, all our right, title and interest in and to all that certain real property situate in the County of Kern, State of California, and more particularly described as follows, to wit:

“The S. 120 acres of the N. $\frac{1}{2}$ of Section 32; and the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of said Section 32, Township 31 S., R. 23 E., M. D. B. & M., containing 280 acres.

“We also hereby sell, assign, transfer and set over to the 32 Oil Company a corporation all the following described leases:

“Lease No. 1 executed by the California Midway Oil Company, upon the S. 60 acres of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of said section 32;

“Also Lease No. 2 executed by the California Midway Oil Company on the NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of said section 32, containing 60 acres;

“Also Lease No. 3, executed by the California Midway Oil Company, a corporation, upon the W. 40 acres of the S. 60 acres of S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of said section 32;

“Also Lease No. 4, executed by A. T. Jergins, Geo. G. Gillett and J. M. McLeod upon the E. 20 acres of the N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of said section 32;

“Also lease No. 5, executed by A. T. Jergins, Geo. G. Gillett and J. M. McLeod upon the E. 20 acres of the S. 60 acres of the NE. $\frac{1}{4}$ of said section 32;

“Also lease No. 6 executed by Geo. W. Walker and Chas. S. Fuller (assigned to Olig Crude Oil Company) upon the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said section 32, and containing 40 acres.

“Also Lease No. 7 executed by Geo. W. Walker and Chas. S. Fuller for the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of said section 32, containing 40 acres, all of said lands

being in Township 31 S., Range 23 E. M. D. B. & M.
[782—676]

“IN WITNESS WHEREOF we have hereunto
set our hands and seals this 29th day of December,
1908.

“MRS. J. M. McLEOD. (Seal)
“By J. M. McLEOD. (Seal)
“Her Attorney in Fact. (Seal)
“J. M. McLEOD. (Seal)
“W. R. WHEAT. (Seal)
“W. D. WILSON. (Seal)
“F. V. GORDON. (Seal)”

Acknowledged Dec. 29, 1908. Recorded May 6,
1909.

Plaintiff's Exhibit No. 41.

Lease to Nov. 26, 1928, by 32 Oil Company to California Midway Oil Company, of NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, and W. $\frac{1}{2}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, and the South 60 acres of the S. $\frac{1}{2}$ NW. $\frac{1}{4}$, and the West 40 acres of the South 60 acres of S. $\frac{1}{2}$ NE. $\frac{1}{4}$, all in Sec. 32, T. 31 S., R. 23 E., M. D. B. & M., and containing 160 acres, more or less.

Acknowledged Nov. 30, 1909. Recorded Jan. 3,
1910.

Plaintiff's Exhibit No. 42.

Deed dated April 29, 1910, from 32 Oil Company to California Midway Oil Company, embracing the South 60 acres of NW. $\frac{1}{4}$ Sec. 32, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 43.

Assignment dated Nov. 4, 1909, from J. M. McLeod to 32 Oil Company of all rights under Plaintiff's Exhibit 33.

Plaintiff's Exhibit No. 44.

Deed dated March 22, 1909, from the signers of the power of attorney, Plaintiff's Exhibit 4, by L. B. McMurtry, attorney in fact, and L. B. McMurtry to Columbus Midway Oil Company, embracing the following: Commencing at the northwest corner of the NW.1/4 of Sec. 32, and running thence at right angles [783—677] southerly 1650 feet; thence at right angles easterly 1056 feet; thence at right angles northerly 1650 feet to the northerly line of Sec. 32, thence at right angles westerly along said northerly line of Sec. 32, 1056 feet, containing approximately 40 acres of land more or less, all in T. 31 S., R. 23 E. M. D. B. & M.

Plaintiff's Exhibit No. 45.

Deed dated Nov. 22, 1909, from Columbus Midway Oil Company to L. B. McMurtry, embracing the lands conveyed by Plaintiff's Exhibit 44.

Plaintiff's Exhibit No. 46.

Deed dated July 22, 1910, from J. M. McLeod and Eva E. McLeod, his wife, to W. F. Herrin, W. S. Porter, J. C. Kirkpatrick, R. P. Schwerin, O. Scribner, Paul Shoup, Rudolph Herold, Jr. and Frank H. Buck, embracing the following: The N.1/2 of the

N.1/2, and the S.1/2 of the S.1/2 of Sec. 22; the N.1/2 of the N.1/2, and the S.1/2 of the S.1/2 of Sec. 26; and the N.1/2 of the N.1/2 of Sec. 34, all in T. 31 S., R. 23 E. Also commencing at a point on the northerly line of Sec. 32 distant thereon 1056 feet easterly from the northwest corner of said section; thence easterly along said northerly line of Sec. 32, 1584 feet; thence at right angles southerly 1650 feet; thence at right angles westerly 1584 feet; thence at right angles northerly 1650 feet to the northerly line of Sec. 32 and point of commencement, being a portion of Sec. 32, T. 31 S., R. 23 E., containing 60 acres, more or less. Also commencing at the northeast corner of Section 32, T. 31 S., R. 23 E., thence westerly along the northerly line of said Sec. 32, 2640 feet; thence at right angles southerly 1650 feet; thence at right angles easterly 2640 feet to the easterly line of said Sec. 32; thence northerly and along said easterly line of Sec. 32, 1650 feet to the northeast [784—678] corner of said Sec. 32 and point of commencement, being a portion of Sec. 32, T. 31 S., R. 23 E., M. D. B. & M., and containing 100 acres more or less.

Plaintiff's Exhibit No. 47.

Agreement dated January 6, 1909, from the signers of power of attorney (Plaintiff's Exhibit 7), by L. B. McMurtry, attorney in fact, sellers, and Chanslor-Canfield Midway Oil Company, buyer, in which sellers agree to sell and buyer agrees to buy

NE.1/4 of Sec. 9, T. 32 S., R. 23 E., M. D. B. & M., acknowledged May 5, 1909, recorded May 5, 1909.

Plaintiff's Exhibit No. 48.

Deed dated October 26, 1909, from the signers of powers of attorney (Plaintiff's Exhibit 7) and L. B. McMurtry, by A. E. Hoepfner, attorney in fact, to Chanslor-Canfield Midway Oil Company, embracing NE.1/4 Sec. 9, T. 32 S., R. 23 E., M. D. B. & M.

Plaintiff's Exhibit No. 50.

Thirty-two receipts, each for 1000 shares of stock of the Pacific Oil Lands Company, similar to the following:

“September 14th, 1911.

“RECEIVED of L. B. McMurtry 1,000 shares of the PACIFIC OIL LANDS COMPANY in full of all claims and demands growing out of power of attorney given by me to him of date December 19, 1907.

HERBERT M. WALKER.”

Each of such receipts bears the signature of one of the signers of the powers of attorney (Plaintiff's Exhibits 4, 5, 6 and 7) and there is a receipt by each of such signers except Daniel W. Darling. The receipt for the stock issued in Darling's name reads in part: “in full of all claims and demands growing out [785—679] of power of attorney given by Daniel W. Darling to him of date December 18, 1907,” and is signed, “Elizabeth W. Darling.”

Also thirty-one checks similar on the face and back to the following:

“No. 116. New York, Sep. 26, 1910.

SECOND NATIONAL BANK

of the City of New York.

Pay to the order of Herbert M. Walker Two
Hundred and Fifty Dollars.

\$250.00/100.

F. H. SEARLS.”

(Back):

“Received from L. B. McMurtry \$250.00, in full payment for all my right, title and interest in and to all lands located by said L. B. McMurtry, on my behalf, in Kern County, California, pursuant to a Power of Attorney made by myself and others to said L. B. McMurtry, bearing date the 19th day of December, 1907.

HERBERT M. WALKER.”

Each of such checks is payable to and signed by one of the signers of said powers of attorney (except Daniel W. Darling). In lieu of a check payable to Darling is one payable to F. H. Searls, similar on the face to the others, but containing no receipt on the back thereof. It is endorsed: “F. H. Searls, Elizabeth W. Darling.” [786—680]

Plaintiff's Exhibit No. 51.

Lease dated January 4, 1909, from the signers of the power of attorney, Plaintiff's Exhibit 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the N.½ NE.¼ Sec. 4, T. 32 S., R. 23 E. Acknowledged May 28, 1909. Recorded August 6, 1909.

Plaintiff's Exhibit No. 52.

Lease dated January 4, 1909, from the signers of the power of attorney, Plaintiff's Exhibit 4, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing the N.1/2 NW.1/4 Sec. 4, 32 S., R. 23 E. Acknowledged May 28, 1909. Recorded August 6, 1909.

Plaintiff's Exhibit No. 53.

Deed and agreement dated February 4, 1909, from the signers of Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sec. 20, T. 30 S., R. 23 E. Recites that parties of first part have heretofore and on same date conveyed the land to party of second part.

Acknowledged Feb. 10, 1909. Recorded March 2, 1909.

Plaintiff's Exhibit No. 54.

Four deeds dated Feb. 4, 1909, as follows:

1. From the signers of power of attorney, Plaintiff's Exhibit 4, to J. M. McLeod, embracing NW.1/4 Sec. 32, T. 31 S. R. 23 E.

2. From the signers of power of attorney, Plaintiff's Exhibit 5, by L. B. McMurtry, attorney in fact, to J. M. McLeod, [787—681] embracing the SE.1/4 Sec. 32, T. 31 S., R. 23 E.

3. From the signers of power of attorney, Plaintiff's Exhibit 6, by L. B. McMurtry, attorney in

fact, to J. M. McLeod, embracing SW.1/4 Sec. 32, T. 31 S., R. 23 E.

4. From the signers of power of attorney, Plaintiff's Exhibit 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing NE.1/4 Sec. 32, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 55.

Deed and agreement dated January 25, 1909, from the signers of powers of attorney, Plaintiff's Exhibits 4, 5, 6, and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sections 22 and 26, T. 31 S., R. 23 E. Acknowledged Feb. 10, 1909.

Plaintiff's Exhibit No. 56.

Four deeds dated January 25, 1909, similar to Plaintiff's Exhibit 54, same grantors and grantees, and embracing Sections 22 and 26, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 57.

Agreement dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6, and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sec. 34, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 58.

Deed dated May 17, 1909, from the signers of the powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact, to J. M. McLeod, embracing Sec. 34, T. 31 S., R. 23 E. [788—682]

Plaintiff's Exhibit No. 59.

Agreement dated February 20, 1909, from J. M. McLeod to the Sunset Monarch Oil Company, embracing S.1/2 N.1/2 and N.1/2 S.1/2 Sec. 20, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 60.

Agreement dated December 29, 1909, from J. M. McLeod to Union Oil Company, embracing N.1/2 S.1/2 and S.1/2 N.1/2 Sec. 34, T. 31 S., R. 23 E.

Plaintiff's Exhibit No. 65.

“Law Office of
C. L. CLAFLIN
Bakersfield, Cal.

November 12, 1908.

Wilson & Wheat, Esqs.,
Hellman Bldg.,
Los Angeles, Cal.,

Dear Sirs:

No doubt you have found the contract sent you some days since. You will be able to compete with me in the line of losing papers. I am sending you the McMurtry deeds as we have no time to make copies today and never imagined that any copy would be needed. Am also sending you one copy of each of the leases and contracts, the others I am retaining here for Mr. McMurtry, as you will have no need of them. Am delivering one copy of contract with Tupman to him as well as the deeds executed by McMurtry. I find on examination of McMurtry's

power of attorney they *they* are not satisfactory in form. Will explain that matter fully when I again see you. All papers sent by Wells-Fargo Express.

Yours truly,
C. L. CLAFLIN." [789—683]

Plaintiff's Exhibit No. 66.

"Los Angeles, Cal., Nov. 14, 1908.

"C. L. Claflin, Esq.,
Bakersfield, Cal.

Dear Sir:

Yours 12th received. Also Wells Fargo package.

You speak of our 'doubtlessly finding a contract sent some days since'—didn't know one was lost. We had received the Richardson et al. agreement some days ago O. K. and still have it. Have found, however, the abstract of Section 32—Mr. Lacy had it.

Our Mr. Gordon will call upon you Monday or Tuesday and check papers up with you. Also please explain to him the trouble with McMurtry's power of attorney and kindly have defect remedied soon as possible.

Yours very truly,
WILSON, WHEAT et al.
Per W. R. W.

P. S.—We return to you herewith the Haberkern et al. deeds (4) of date Oct. 30/08, and think they should be recorded (if not already done) for the benefit of the McMurtry interests. Please see that all other papers and contracts are recorded that you think ought to be—rendering bill to us accordingly." [790—684]

DEFENDANTS' EXHIBITS.

Defendants' Exhibit "B."

"ASSOCIATED OIL COMPANY.

Carbon Copy.

Duplicate.

April 25th, 1910.

MEMO.

LANDS HELD BY McMURTRY & HOEPPNER
IN THE MIDWAY FIELD.

N.1/4	Sec. 20	31/23	160 acres.
S.1/4	" 20	"	160 "
N.1/4	" 22	"	160 "
S.1/4	" 22	"	160 "
N.1/4	" 26	"	160 "
S.1/4	" 26	"	160 "
N.1/4	" 32	"	160 "
S.1/4	" 32	"	160 "
N. 200 Acres in			
	Sec. 32-31/23		200 "
Total			1480 "

These lands are held by mineral locations which McMurtry claims to have made six years ago. The lands are protected by actual drilling operations.

McMurtry was in San Francisco April 20th. His residence is #1325 Green Street. 'Phone Franklin 5773.

W. A. WILLIAMS."

Defendants' Exhibit "K."

"Ratified by the Board of Directors of Asso. Oil Co. 9/6/10. G. S.

“1. WHEREAS, Herbert M. Walker, H. E. Bashore, R. B. Welch, F. H. Romaine, Jr., W. A. Keenan, C. Rupert Walker, Eugene Metz and William Mahn, hereinafter called grantors, pursuant to the provisions of Chapter VI, Title 32 of the Revised Statutes of the United States, and the local customs, laws and regulations governing the mining district known as the Midway Mining District, in the County of Kern, State of California, duly locate under said Act the Northwest Quarter (NW. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., and that at said time the said land was open and unoccupied land and subject to location, and that oil was discovered on said property in May, 1909;

“2. AND WHEREAS, on the 1st day of January, 1909, Frank D. Taylor, Edwin L. Powell, Daniel W. Darling, J. W. Pentz, S. H. Freeman, C. W. Thorn, J. F. Harder and F. H. Searls, hereinafter called grantors, did, and they do hereby [791—685] represent that they did, duly and legally locate, pursuant to the provisions of Chapter VI, Title 32 of the Revised Statutes of the United States, and the local customs, laws and regulations governing the mining district known as the Midway Mining District, in the County of Kern, State of California, the Northeast Quarter (NE. $\frac{1}{4}$) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M.; and do hereby further represent that, subject to that certain conveyance of date May 17, 1909, by each and all of said persons hereinbefore men-

tioned, called a grant, bargain and sale deed, executed to J. M. McLeod, apparently conveying the whole of the North Half (N.1/2) of Section Thirty-two (32), Township Thirty-one (31) South, Range Twenty-three (23) East, M. D. B. & M., and subject also to that certain deed called a quit-claim deed, executed by all of said persons, dated May 17, 1909, to J. M. McLeod, purporting to convey the North Half (N.1/2) of said Section Thirty-two (32) to him, that they are the owners of all of said North Half (N.1/2) of said Section Thirty-two (32) and do represent that the said deeds were made entirely subject to that certain agreement recorded on August 6, 1909, in Book 19 of Agreements, page 93 of the records of Kern County, State of California, made and entered into by all of said persons with J. M. McLeod, in and by which the said J. M. McLeod did agree to drill for oil upon the Northeast and Northwest Quarters of said Section Thirty-two (32), and did agree that he would convey the North one hundred (100) acres of each and both of said Quarter Sections to the grantors herein named, their heirs, executors, administrators and assigns upon the discovery of oil, and when the Receiver's final receipt shall be issued on application for patent;

“3. AND WHEREAS, the said parties above named do represent that a discovery of oil was made upon the Northwest Quarter (NW.1/4) of Section Thirty-two (32) pursuant to law, in May, 1909, and that ever since they have been in possession of said property, to-wit, from the date of location; also that

they either by themselves or by and through their agents or by and through said J. M. McLeod, have diligently and continuously operated said land to the end that discovery of oil should be made upon each and both of said quarter sections; and said parties also represent that drilling for oil on said Northeast Quarter (NE.1/4) of Section Thirty-two (32) was actually in progress before the withdrawal thereof from location by the Government of the United States;

“4. AND WHEREAS, it appears from an Abstract of Title submitted, made by the Bakersfield Abstract Company, that J. M. McLeod did, on November 4, 1909, assign to 32 Oil Co., a corporation, any and all interest which he might acquire in and to the North Half (N.1/2) of Section Thirty-two (32), under and by virtue of the said agreement hereinbefore referred to, executed on May 17, 1909, wherein the grantors above named are of the one part and said McLeod is of the other part; [792—686]

“5. AND WHEREAS, L. B. McMurtry does represent that he has an interest in the said lands with the said sixteen (16) persons above mentioned (other than said J. M. McLeod and said 32 Oil Co.) and does further represent that he is the duly authorized, empowered and acting attorney in fact of each and all of said sixteen (16) persons and has the right to sell said lands and all the interest of said sixteen (16) persons therein and thereto, and has the legal right to make conveyances, and that his powers of attorney are in his possession, and that none of said powers of attorney has been revoked; and that each and all of said sixteen (16) persons are now alive;

“6. NOW, THEREFORE, in consideration of the sum of Five Thousand (\$5,000) Dollars to him, the said L. B. McMurtry, in hand paid, by W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Schribner, Paul Shoup and Frank H. Buck, hereinafter called the Herrin grantees, and by the Associated Oil Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, the said L. B. McMurtry does hereby agree, simultaneously with the execution of this agreement by himself and said Associated Oil Company, to place with the Bank of California, San Francisco, in escrow, conveyances executed by himself as the attorney in fact of each and all of said sixteen (16) persons, separately conveying out of said sixteen (16) persons to the said W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Scribner, Paul Shoup and Frank H. Buck, individually, the interests respectively of said sixteen (16) persons, as separate conveyances, in and to the following described property, to-wit:

“7. The North One Hundred (100) acres of the Northeast Quarter (NE. $\frac{1}{4}$) of said Section Thirty-two (32) and the North One Hundred (100) acres of the Northwest Quarter (NW. $\frac{1}{4}$) of said Section Thirty-two (32), save and except that portion of said North One Hundred (100) acres of said Northwest Quarter (NW. $\frac{1}{4}$) commencing at the northwest corner of the Northwest Quarter (NW. $\frac{1}{4}$) of said Section Thirty-two (32), and running thence at a right angle Southerly sixteen hundred and fifty

(1650) feet; thence at a right angle Easterly ten hundred and fifty-six (1056) feet; thence at a right angle Northerly sixteen hundred and fifty (1650) feet to the Northerly line of Section Thirty-two (32); thence at a right angle Westerly along said Northerly line of Section Thirty-two (32) ten hundred and fifty-six (1056) feet, containing approximately forty (40) acres of land, more or less.

“8. And the said L. B. McMurtry and the said sixteen (16) other persons hereunto signing, do hereby agree to obtain conveyances to the said described property within thirty (30) days from this date from J. M. McLeod and from the 32 Oil Co., and the said L. B. McMurtry does hereby agree to himself deposit his own deed and all of said conveyances conveying to the said W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Scribner, Paul Schoup and Frank H. Buck, the entire right, title and [793—687] interest of all of said parties in and to the said properties hereinbefore mentioned; and does hereby further covenant, promise and agree that he will forthwith proceed to, and will obtain from said sixteen (16) persons, in proper form to be recorded, pursuant to the laws of the State of California, an acknowledgment that at this date his said powers of attorney are in full force and effect, and also a ratification and a confirmation by each and all of said persons of the execution of said deeds, and each and all of them, hereinbefore mentioned.

“9. It is hereby agreed between said Associated Oil Company, and the said sixteen (16) persons, and

the said L. B. McMurtry, that the purchase price of the said one hundred and sixty (160) acres in the North half (N.1/2) of Section Thirty-two (32) shall be the sum of Four Hundred and Thirty Thousand (\$430,000) Dollars; One Hundred and Seventy-five Thousand (\$175,000) Dollars thereof to be paid in cash, and the balance, namely, Two Hundred and Fifty-five Thousand (\$255,000) Dollars, together with interest thereon from the date hereof at five (5 pct.) per cent. per annum to be paid in production, said cash and payment in production to be paid as follows: As to the cash payment, immediately upon the deeds being deposited in escrow, the Associated Oil Company will deposit with the said Bank of California, San Francisco, the sum of Eighty-five Thousand (\$85,000) Dollars, which said sum of Eighty-five Thousand (\$85,000) Dollars, together with the said Five Thousand (\$5,000) Dollars paid upon the signing of these presents, shall be applied upon the purchase price of said tract of land, and as a part thereof; the said Eighty-five Thousand (\$85,000) Dollars to remain in escrow until the said L. B. McMurtry shall have procured and delivered according to the terms and conditions hereof, to the said grantees hereinbefore mentioned, or to the Associated Oil Company, their agent, satisfactory confirmation of the deeds by the said grantors, as is hereinafter provided; the said Eighty-five Thousand (\$85,000) Dollars to be drawn down by the said Associated Oil Company and said Five Thousand (\$5,000) Dollars to be returned to it at the expiration of ninety (90) days from this date, at its option, provided said

confirmation hereinbefore referred to shall not have been obtained. And in addition thereto, said Associated Oil Company does agree to pay, for and on behalf of said Herrin grantees, the additional sum of Eighty-five Thousand (\$85,000) Dollars in six months from this date, if said confirmations shall have been obtained, with interest thereon at the rate of five (5) per cent. per annum from the date hereof. As to payments in production, the Associated Oil Company does agree to pay the additional sum of Two Hundred and Fifty-five Thousand (\$255,000) Dollars, the balance of the purchase price of said property, in oil and gas produced, in the manner hereinafter provided.

“10. WHEREAS, the said Associated Oil Company, as the agent of said Herrin grantees, has made and entered into contracts with thirty-two (32) locators of and concerning the North Half (N.1/2) of the North Half (N.1/2) of Section Thirty-four (34), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) the South Half (S.1/2) of Section Thirty-four (34), Township Thirty-one (31) [794—688] South, Range Twenty-three (23) East, which may or may not be included in this transaction, at the option of L. B. McMurtry; also of and concerning a tract known as the North Half (N.1/2) of the North Half (N.1/2) of Section Twenty-six (26), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) of the South Half (S.1/2) of Section Twenty-six (26), Township Thirty-one

(31) South, Range Twenty-three (23) East; also of and concerning the North Half (N.1/2) of the North Half (N.1/2) of Section Twenty-two (22), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) of the South Half (S.1/2) of Section Twenty-two (22), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the North Half (N.1/2) of the North Half (N.1/2) of Section Twenty (20), Township Thirty-one (31) South, Range Twenty-three (23) East; also of and concerning the South Half (S.1/2) of the South Half (S.1/2) of Section Twenty (20), Township Thirty-one (31) South, Range Twenty-three (23) East; each of said tracts containing one hundred and sixty (160) acres more or less of land, the said contracts being made with the locators thereof by and through L. B. McMurtry, representing himself as their agent and duly authorized attorney in fact, and the purchase price being Fifteen Hundred, Ninety-three and 75/100 (\$1593.75) Dollars per acre, payable from proceeds of oil and gas produced from said tracts of land respectively;

* * * * *

“16. In the event that said Associated Oil Company or said Herrin grantees shall be dispossessed of said one hundred and sixty (160) acres tract of land by the United States Government, or any other claimant, said Associated Oil Company and Herrin grantees shall not in any wise be responsible for the then unpaid purchase price of said property, or any loss or damage sustained by the grantors above

named, L. B. McMurtry, or any other person, and may remove any and all improvements therefrom; and such rights as may herein be conveyed to the Herrin grantees and the Associated Oil Company by the various persons hereinbefore mentioned shall then revert to them and each of them.

* * * * * *

“19. It is also understood and agreed hereby that said grantors herein, or their duly authorized agent, may at any and all reasonable times have access to said lands and the improvements thereon, for the purpose of inspecting operations thereon, and that L. B. McMurtry shall receive the purchase price herein agreed to be paid.

“20. It is further understood and agreed that the Five Thousand (\$5,000) Dollars advanced by the Associated Oil Company to said L. B. McMurtry is to be a lien upon all the interests of said L. B. McMurtry in and to said land.

21. The said Associated Oil Company and said Herrin grantees agree to hold the grantors harmless from all loss or damage by reason of the filing of any lien upon any of said tracts of land, or any part thereof, by any laborer, contractor, or materialman, for work done or material furnished to said [795—689] Associated Oil Company or to said Herrin grantees, and to pay all costs, including the attorney’s fees of the grantors, expended in defending or protecting said property from any such claim or lien and clearing the title thereto. And the said Associated Oil Company and the said Herrin grantees agree to use and employ at all times all diligence in defend-

ing and protecting the title and right to said premises hereby conveyed by said grantors, ejecting trespassers therefrom, and in maintaining the title of the said grantors to each of said tracts of land, all at its own expense, and the said Associated Oil Company and the said Herrin grantees hereby agree to do, or have done, at their own expense the annual assessment work required by the United States statutes; upon each of the aforesaid tracts of land until patent shall be issued, or until this agreement shall terminate, and to record the necessary proofs of labor therefor prior to December 15 of each year until patent shall have issued.

* * * * *

“IN WITNESS WHEREOF the said Associated Oil Company, by its proper officers thereunto duly authorized, have caused these presents to be executed by causing its corporate name to be signed and its corporate seal to be attached thereto; and the other parties hereto have hereunto set their hands this fourth day of August, 1910.

“ASSOCIATED OIL COMPANY,
(Corporate Seal.)

(Signatures): “By PAUL SHOUP,
“Vice-President.

“By O. SCRIBNER,
“Secretary.

(Signatures): “WM. F. HERRIN.

“W. S. PORTER.

“JOHN C. KIRKPATRICK.

“FRANK H. BUCK.

“O. SCRIBNER.

“RUDOLPH HEROLD, JR.

“R. P. SCHWERIN.

“PAUL SHOUP.

“L. B. McMURTRY.”

And the thirty-two signers of powers of attorney, Plaintiff's Exhibits 4, 5, 6 and 7, by L. B. McMurtry, attorney in fact.

Acknowledged September 3 and 4, 1910. [796—690]

Defendants' Exhibit "L."

“San Francisco, Cal., June 22, 1911.

“Associated Oil Company,

San Francisco, California.

Gentlemen:

Out of the balance of the \$175,000 cash payment due me under that certain agreement of date the 4th day of August, 1910, wherein and whereby Herbert M. Walker and fifteen other persons therein named as grantors, through myself as their attorney-in-fact, sold unto W. F. Herrin and seven other persons in said agreement named as grantees, the 160 acres of land in said agreement described, situated in the North half of Section 32, Township 31 South, Range 23 East, M. D. B. & M., you are hereby authorized to retain the sum of \$2500 until the 10th day of December, 1911, at which time the Decree of Final Distribution heretofore entered in that certain probate proceedings pending in the Superior Court of the County of Kern, State of California, and entitled ‘In the Matter of the Estate of Daniel W. Darling, Deceased’ and entered upon the records of said Court upon the 6th day of June, 1911, shall become final, if

no claim is made against same by persons hereinafter named. If claim be made said sum to be used by you in liquidating same and balance, if any, unused, to be paid to me, when settlement of claims is made. And in consideration of your paying to me the balance of said cash payment, together with the accrued interest thereon as of the date hereof, I hereby agree to hold the grantees named in said agreement of August 4th, 1910, hereinbefore referred to harmless from all claims and demands of every kind which Roger C. Darling or Christine Darling, or either of them, may make against the said grantees in said agreement mentioned growing out of their claim as legatees under the last will and testament of the said Daniel W. Darling, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand this 22d day of June, 1911.

(Signed) L. B. McMURTRY."

Defendants' Exhibit "O."

Deed dated July 30, 1910, L. B. McMurtry to W. F. Herrin, John C. Kirkpatrick, R. P. Schwerin, W. S. Porter, Rudolph Herold, Jr., O. Scribner, Paul Shoup and Frank H. Buck, embracing the North 100 acres of the NE. $\frac{1}{4}$ of Sec. 32, and the North 100 acres of the NW. $\frac{1}{4}$ of Sec. 32, save and except that portion of said North 100 acres of said NW. $\frac{1}{4}$ commencing at the northwest corner of the NW. $\frac{1}{4}$ of [797—691] of said Sec. 32, and running thence at a right angle southerly 1650 feet; thence at a right angle easterly 1056 feet; thence at a right angle northerly 1650 feet to the northerly line of said Section 32;

thence at a right angle westerly along said northerly line of said Sec. 32, 1056 feet, containing approximately 40 acres of land, more or less. Said land being situate in T. 31 S., R. 23 E., M. D. B. & M.

Acknowledged August 4, 1910.

Defendants' Exhibit "X."

Four deeds, dated Feb. 1, 1909, and acknowledged Feb. 10, 1909, to H. C. Stratton, as follows:

1. From Herbert M. Walker, et al. (Plaintiff's Exhibit 4), by L. B. McMurtry, attorney in fact, embracing NW. $\frac{1}{4}$ Sec. 28, 31-23.

2. From Samuel R. Banks, et al. (Plaintiff's Exhibit 5), by L. B. McMurtry, attorney in fact, embracing SE. $\frac{1}{4}$ Sec. 28, 31-23.

3. From Francis E. Pratt, et al. (Plaintiff's Exhibit 6), by L. B. McMurtry, attorney in fact, embracing SW. $\frac{1}{4}$ Sec. 28, 31-23.

4. From Frank D. Taylor, et al. (Plaintiff's Exhibit 7), by L. B. McMurtry, attorney in fact, embracing NE. $\frac{1}{4}$ Sec. 28, 31-23.

Defendants' Exhibits "F-1" to "M-1."

Deeds and stipulation showing conveyance by each of the 32 signers of Plaintiff's Exhibit 4, 5, 6 and 7 (excepting Darling), by L. B. McMurtry, attorney in fact, by separate deeds, dated July 10, and acknowledged August 4, 1910, of his interest in each quarter section of land affected by the contract of August 4, 1910 (Defendants' Exhibit "K"), to one of the persons designated in said contract as "Herrin Grantees," so that each of said "Herrin Grantees" thus [798-692] acquired the interest of one of said

locators in each quarter-section of land affected by said contract.

Defendants' Exhibit "O-1."

"Douglas 314.

**WILLIAM T. GARRETT and DOUGLAS S.
WATSON.**

First National Bank Building.
San Francisco.

December 19th, 1910.

Mr. O. Scribner,
Ass't Gen'l Manager,
Associated Oil Company,
San Francisco, California.

Dear Sir:—

On August 4, 1910, I entered into an agreement with the Associated Oil Company and the Herrin Grantees whereby I agreed to sell 160 acres in Section 32 and 320 acres in Sections 20, 22, 26 and 34 for \$2,470,000.00—\$5,000.00 Cash, which was paid me, \$85,000.00 when I should have obtained confirmation of my acts under powers of attorney, and, \$85,000.00 on February 1, 1911, the balance of the purchase price to be paid in production in accordance with the terms of the several agreements.

On September 20, 1910 I received the sum of \$25,000.00, at which time in order to protect your Company I signed a note and gave a mortgage covering the properties sold you under agreement, so that there remains due of the first payment of \$85,000.00, \$60,000.00 which is in the form of a check payable to my order and now held by the Bank of California.

I have obtained 31 confirmations in accordance with our agreement, which have been deposited with you, and a quitclaim deed from Elizabeth Darling widow of Daniel W. Darling, also Daniel W. Darling's will which my attorney, Mr. W. S. Brann has filed in the Probate Division of the Superior Court of Kern County, California. Letters of administration will issue to Fred B. Hughes, my nominee and within four months we will be able to have a partial distribution of the Darling Estate to me so that any title which might have vested in Darling will come to me, and the deeds already deposited with the Bank of California and signed by me to the Herrin Grantees, will pass the title.

Upon the payment to me of the \$60,000.00 now held by the Bank of California and the cancellation of the note and mortgage given you as security for the \$25,000.00 advanced, I agree to allow the payment due February 1, 1911 to ride until I receive a decree in the Estate of Daniel W. Darling, or a judgment against it.

Yours truly,

(Signed) L. B. McMURTRY."

P. S.—Mr. Watson informs me that you would like to have me obtain a grant, bargain and sale deed from Elizabeth Darling covering the property belonging to the Associated Oil Company. I have already requested my Attorney to obtain the deed for you, which should come to hand in due course.

(Signed) L. B. McMURTRY," [799—693]

Certificate of Judge to Statement of Evidence.

It appearing that the foregoing statement of the evidence to be included in the record on appeal to the Circuit Court of Appeals for the Ninth Circuit is full, true, complete, and properly prepared pursuant to stipulation filed herein this day, the same is hereby approved.

Dated April 22, 1920.

BLED SOE.

Judge. [800—694]

In the District Court of the United States, for the
Southern District of California, Northern Division,
Ninth Circuit.

No. B-10—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, et als.,
Defendants.

Praecipe for Transcript on Appeal.

To the Clerk of the Above-entitled Court:

You will please prepare and duly authenticate a transcript of the following portions of the record in the above-entitled cause for appeal to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Amended bill of complaint.
2. Answer of defendant California Midway Oil Company.

3. Answer of defendant Columbus Midway Oil Company.
4. Answer of defendants Thirty-two Oil Company and J. M. McLeod.
5. Answer of defendant L. B. McMurtry.
6. Decree of dismissal.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.
10. Citation on appeal.
11. Stipulation re statement of evidence.
12. Statement of evidence.
13. Praeceptum.

HENRY F. MAY,

E. B. LACY,

Special Assistants to the Attorney General,
Solicitors for Plaintiff. [801—802]

Service of the foregoing praecipe is admitted, this
4th day of April, 1921.

HENRY ACH and

EDMUND TAUSZKY,

Solicitors for Defendants, Associated Oil Company.

ROBT. M. PEASE,

Solicitors for Defendants, J. M. McLeod, and Apr.

15, 1921, Thirty-two Oil Company.

JORDAN & BRANN,

Solicitor for Defendant, L. B. McMurtry.

GEO. E. WHITAKER,

Solicitor for Defendant, California Midway Oil Co.

PILLSBURY, MADISON & SUTRO,
Solicitors for Defendants, Standard Oil Company.
U. T. CLOTFELTER,
JORDAN & BRANN,
Solicitors for Defendant, Columbus Midway Oil Co.
[803]

[Endorsed]: No. B-10. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. California Midway Oil Company, et als. Praeceptum for Transcript on Appeal. Filed Apr. 22, 1921. Chas. N. Williams, Clerk. By R. S. Zimmerman, Deputy Clerk. [804]

IN EQUITY—No. B-10.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,
Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, CHAS. N. WILLIAMS, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing eight hundred and four (804) typewritten pages, numbered from 1 to 804, inclu-

sive, and comprised in one volume to be a full, true and correct copy of the amended bill of complaint, answer of defendant California Midway Oil Company, answer of defendants 32 Oil Company and J. M. McLeod, answer of defendant L. B. McMurtry, decree of dismissal, petition for appeal, assignment of errors, order allowing appeal, stipulation re statement of evidence, statement of evidence and praecipe for transcript in the above and therein entitled cause, and that the same together constitute the record in said cause, as specified in the said praecipe, filed in my office on behalf of the United States of America, plaintiff and appellant, by its attorneys of record, with the exception of the answer of defendant, Columbus Midway Oil Company, which is specified in said praecipe, but which was not filed in the above-entitled action. I further certify that the original citation on appeal is hereto attached and made a part of said record.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Northern Division, this 30th day of April, in the year of our Lord one thousand nine hundred and twenty-one, and of our Independence the one hundred and forty-fifth.

[Seal]

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By R. S. Zimmerman,
Deputy Clerk.

[Endorsed]: No. 3682. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. California Midway Oil Company, Associated Oil Company, Columbus Midway Oil Company, 32 Oil Company, L. B. McMurtry, J. M. McLeod, and Standard Oil Company, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed May 2, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States for the
Southern District of California, Northern Division,
Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY et
al., Being Numbered in B-10 in the District
Court,

Appellees.

**Order Enlarging Time to and Including March 1,
1920, to File Record and Docket Cause.**

This cause coming on to be heard on the application of United States of America, appellant, for an

enlargement of time in which to file in the Circuit Court of Appeals for the Ninth Circuit the record and docket therein the above-entitled cause up to and including the 1st day of March, 1920,—

IT IS ORDERED that the time in which to file the record and docket the above-entitled cause in the Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, enlarged to the 1st day of March, 1920.

Dated this 8th day of January, 1920.

R. S. BEAN,
District Judge.

[Endorsed]: No. 3682. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, Appellant, vs. California Midway Oil Company et al., Appellees. Order Filed Jan. 8, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY et
al., Being Numbered in B-10 in the District
Court,

Appellees.

**Order Enlarging Time of Return Day of Citation and
Filing of Record and Docketing of Cause to and
Including June 1, 1920.**

This cause coming on to be heard upon the application of the United States of America, appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file the transcript of the record and docket the above-entitled cause up to and including the 1st day of June, 1920, and good cause being shown,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, enlarged and extended up to and including the 1st day of June, 1920, and that the appellant may have to and including the 1st day of June, 1920, in which to file in the office of the Clerk of this Court the transcript of the record on appeal and docket said cause in this court.

Dated February 24, 1920.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the Circuit Court of Appeals of the United States for the Ninth Circuit. United States of America, Appellant, vs. California Midway Oil Co. et al., Appellees. Order Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause. Filed Feb. 26, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,

Defendants and Appellees.

**Stipulation Enlarging Time of Return Day of Cita-
tion and Filing of Record and Docketing of
Cause to and Including August 1, 1920.**

IT IS HEREBY STIPULATED by and between
the parties in the above-entitled cause, which is in
Equity B-10 in the District Court of the United
States for the Southern District of California,
Northern Division, that the plaintiff and appellant
may have up to and including the 1st day of August,
1920, within which to file and docket said cause in the
United States Circuit Court of Appeals for the Ninth
Circuit, and that the return day of the citation on the
appeal to the United States Circuit Court of Appeals
for the Ninth Circuit may be enlarged and extended
up to and including 1st day of August, 1920.

Dated May 17th, 1920.

HENRY F. MAY,

E. B. LACY,

C. D. HAMEL,

Special Assistants to the Attorney General,

Solicitors for Plaintiff and Appellant.

HENRY ACH,

EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated Oil
Company.

R. M. PEASE,

Solicitor for Defendants and Appellees J. M. McLeod
and 32 Oil Company.

JORDAN & BRANN,

Solicitors for Defendant and Appellee L. B. McMur-
try.

GEORGE E. WHITAKER,

Solicitor for Defendant and Appellee California
Midway Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitors for Defendant and Appellee Standard Oil
Company.

U. T. CLOTFELTER,

Solicitor for Defendant and Appellee Columbus
Midway Oil Company.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, 32 OIL COM-
PANY, L. B. McMURTRY, J. M. McLEOD,
and STANDARD OIL COMPANY,

Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation and
Filing of Record and Docketing of Cause to and
Including August 1, 1920.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing that a stipulation by and between the solicitors for the respective parties hereto has been filed, providing that such time, may be extended up to and including the 1st day of August, 1920,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended up to and

including the 1st day of August, 1920, and that appellant may have to and including the 1st day of August, 1920, in which to file in the office of the Clerk of this court its transcript of the record on appeal and to docket said cause in this court.

Dated May 17, A. D. 1920.

W. W. MORROW,
Circuit Judge.

[Endorsed]: No. 3682. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellant, vs. California Midway Oil Company, et al., Defendants and Appellees. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including August 1st, 1920 to File Record and Docket Cause. Filed May 17, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUM-
BUS MIDWAY OIL COMPANY, 32 OIL
COMPANY, L. B. McMURTRY, J. M. Mc-
LEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

Stipulation Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause to and Including November 1, 1920.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause, which is in Equity B-10 in the District Court of the United States for the Southern District of California, Northern Division, that the plaintiff and appellant may have up to and including the 1st day of November, 1920, within which to prepare the statement of evidence and to file and docket said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and that the return day of the citation on the appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be enlarged and extended up to and including said 1st day of November, 1920.

Dated July 28th, 1920.

HENRY F. MAY,

C. D. HAMEL,

E. B. LACY,

Special Assistants to the Attorney General,
Solicitors for Plaintiff and Appellant.

HENRY ACH and

EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated
Oil Company.

R. H. PEASE,

Solicitor for Defendants and Appellees J. M. Mc-
Leod and 32 Oil Company.

JORDAN & BRANN,

Solicitor for Defendant and Appellee L. B. McMurtry.

GEORGE E. WHITAKER,

Solicitor for Defendant and Appellee California Midway Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitors for Defendant and Appellee Standard Oil Company.

U. T. CLOTFELTER,

Solicitor for Defendant and Appellee Columbus Midway Oil Company.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, ASSOCIATED OIL COMPANY, COLUMBUS MIDWAY OIL COMPANY, 32 OIL COMPANY, L. B. McMURTRY, J. M. McLEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including November 1, 1920.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for

an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing that a stipulation by and between the solicitors for the respective parties hereto has been filed, providing that such time may be extended up to and including the 1st day of November, 1920,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended up to and including to 1st day of November, 1920, and that appellant may have to and including the 1st day of November, 1920, in which to file in the office of the Clerk of this court its transcript of the record on appeal and to docket said cause in this court.

Dated July 28, A. D. 1920.

W. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellant, vs. California Midway Oil Company et al., Defendants and Appellees. Stipulation and Order Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause. Filed Jul. 28, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUM-
BUS MIDWAY OIL COMPANY, 32 OIL
COMPANY, L. B. McMURTRY, J. M. Mc-
LEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

**Stipulation Enlarging Time of Return Day of Cita-
tion and Filing of Record and Docketing of
Cause to and Including February 1, 1921.**

IT IS HEREBY STIPULATED by and be-
tween the parties in the above-entitled cause, which
is in Equity B-10 in the District Court of the United
States for the Southern District of California,
Northern Division, that the plaintiff and appellant
may have up to including the 1st day of February,
1921, within which to prepare the statement of evi-
dence and to file and docket said cause in the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, and that the return day of the citation on the
appeal to the United States Circuit Court of Ap-
peals for the Ninth Circuit may be enlarged and ex-
tended up to and including said 1st day of February,
1921.

Dated October 25th, 1920.

HENRY F. MAY,

C. D. HAMEL,

E. B. LACY,

Special Assistants to the Attorney General,

Solicitors for Plaintiff and Appellant.

HENRY ACH and

EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated
Oil Company.

R. M. PEASE,

Solicitor for Defendants and Appellees J. M. Mc-
Leod and 32 Oil Company.

JORDAN & BRANN,

Solicitor for Defendant and Appellee L. B. Mc-
Murtry.

GEORGE E. WHITAKER,

Solicitor for Defendant and Appellee California
Midway Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitors for Defendant and Appellee Standard
Oil Company.

U. T. CLOTFELTER,

By JORDAN & BRANN,

Solicitor for Defendant and Appellee Columbus Mid-
way Oil Company.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUM-
BUS MIDWAY OIL COMPANY, 32 OIL
COMPANY, L. B. McMURTRY, J. M. Mc-
LEOD, and STANDARD OIL COMPANY,
Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including February 1, 1921.**

This cause coming on to be heard upon the appli-
cation of the plaintiff and appellant for an enlarge-
ment of the return day of the citation on appeal to
the United States Circuit Court of Appeals and for
an enlargement of the time in which the transcript
of the record on appeal may be filed, and the cause
docketed in the United States Circuit Court of Ap-
peals for the Ninth Circuit, and it appearing that a
stipulation by and between the solicitors for the re-
spective parties hereto has been filed, providing
that such time may be extended up to and including
the 1st day of February, 1921,—

IT IS HEREBY ORDERED that the return day
of the citation on appeal to the United States Cir-
cuit Court of Appeals for the Ninth Circuit be and
the same is hereby enlarged and extended up to and

including the 1st day of February, 1921, and that appellant may have to and including the 1st day of February, 1921, in which to file in the office of the Clerk of this court its transcript of the record on appeal and to docket said cause in this court.

Dated October 26, A. D. 1920.

W. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Plaintiff and Appellant, vs. California Midway Oil Company et al., Defendants and Appellees. Stipulation Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause, and Order. Filed Oct. 26, 1920. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,
vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, THIRTY-
TWO OIL COMPANY, L. B. McMURTRY,
J. M. McLEOD, and STANDARD OIL
COMPANY,
Defendants and Appellees.

Stipulation Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause to and Including May 1, 1921.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause, which is in Equity B-10 in the District Court of the United States for the Southern District of California, Northern Division, that the plaintiff and appellant may have up to and including the 1st day of May-1921, within which to prepare the statement of evidence and to file and docket said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and that the return day of the citation on the appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be enlarged and extended up to and including said 1st day of May, 1921.

Dated January 25, 1921.

HENRY F. MAY,
C. D. HAMEL,
E. B. LACY,

Special Assistants to the Attorney General,
Solicitors for Plaintiff and Appellant.

HENRY ACH and
EDMUND TAUSZKY,

Solicitors for Defendant and Appellee Associated
Oil Company.

R. M. PEASE,
Solicitor for Defendants and Appellees J. M. Mc-
Leod and Thirty-two Oil Company.

JORDAN & BRANN,
Solicitor for Defendant and Appellee L. B. Mc-
Murtry.

GEO. E. WHITAKER,

Solicitor for Defendant and Appellee California
Midway Oil Company.

PILLSBURY, MADISON & SURTO,

Solicitors for Defendant and Appellee Standard Oil
Company.

U. T. CLOTFELTER,

Solicitor for Defendant and Appellee Columbus
Midway Oil Company.

[Endorsed]: No. 3682. In the Circuit Court of
the United States for the Ninth Circuit. United
States of America vs. California Midway Oil Com-
pany et als. Stipulation Enlarging Time of Return
Day of Citation and Filing of Record and Docket-
ing of Cause. Filed Jan. 25, 1921. F. D. Monckton,
Clerk. Refiled May 2, 1921. F. D. Monckton,
Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, THIRTY-
TWO OIL COMPANY, L. B. McMURTRY,
J. M. McLEOD, and STANDARD OIL
COMPANY,

Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including May 1, 1921.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing that a stipulation by and between the solicitors for the respective parties hereto has been filed, providing that such time may be executed up to and including the 1st day of May, 1921.

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended up to and including the 1st day of May, 1921, and that appellant may have to and including the 1st day of May, 1921, in which to file in the office of the clerk of this Court its transcript of the record on appeal and to docket said cause in this court.

Dated January 25, 1921.

W. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the Circuit Court of the United States for the Ninth Circuit. United States of America vs. California Midway Oil Company et als. Order Enlarging Time of Return Day

of Citation and Filing of Record and Docketing of Cause. Filed Jan. 25, 1921. F. D. Monckton, Clerk. Refiled May 2, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

CALIFORNIA MIDWAY OIL COMPANY, AS-
SOCIATED OIL COMPANY, COLUMBUS
MIDWAY OIL COMPANY, THIRTY-
TWO OIL COMPANY, L. B. McMURTRY,
J. M. McLEOD, and STANDARD OIL
COMPANY,

Defendants and Appellees.

**Order Enlarging Time of Return Day of Citation
and Filing of Record and Docketing of Cause to
and Including June 1, 1921.**

This cause coming on to be heard upon the application of the plaintiff and appellant for an enlargement of the return day of the citation on appeal to the United States Circuit Court of Appeals and for an enlargement of the time in which the transcript of the record on appeal may be filed, and the cause docketed in the United States Circuit Court of Appeals for the Ninth Circuit, and good cause therefor being shown,—

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and

the same is hereby enlarged and extended up to and including the 1st day of June, 1921, in which to file in the office of the Clerk of this Court its transcript of the record on appeal and to docket said cause in this Court.

Dated April 26th, 1921.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3682. In the Circuit Court of the United States for the Ninth Circuit. United States of America vs. California Midway Oil Company et als. Order Enlarging Time of Return Day of Citation and Filing of Record and Docketing of Cause. Filed Apr. 26, 1921. F. D. Monckton, Clerk. Refiled May 2, 1921. F. G. Monckton, Clerk.

